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November 9, 2015

The Honorable Jim 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: Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*

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 “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (RIN: 2060-AR33). We received the rule on September 11, 2015. It was published in the *Federal Register* as a final rule on October 23, 2015. 80 Fed. Reg. 64,662.

The final rule establishes final emission guidelines for states to follow in developing plans to reduce greenhouse gas (GHG) emissions from existing fossil fuel-fired electric generating units (EGUs). According to EPA, the final rule establishes:

- carbon dioxide (CO<sub>2</sub>) emission performance rates representing the best system of emission reduction for two subcategories of existing fossil fuel-fired EGUs—fossil fuel-fired electric utility steam generating units and stationary combustion turbines;
- state-specific CO<sub>2</sub> goals reflecting the CO<sub>2</sub> emission performance rates; and
- guidelines for the development, submittal, and implementation of state plans that establish emission standards or other measures to implement the CO<sub>2</sub> emission performance rates, which may be accomplished by meeting the state goals.

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  
“CARBON POLLUTION EMISSION GUIDELINES FOR  
EXISTING STATIONARY SOURCES:  
ELECTRIC UTILITY GENERATING UNITS”  
(RIN: 2060-AR33)

(i) Cost-benefit analysis

EPA prepared a cost-benefit analysis in conjunction with the final rule. The final rule contains guidelines for the development, submittal, and implementation of state plans that implement the CO<sub>2</sub> emission performance rates. The guidelines provide states with a range of choices for developing their own plans. According to the final rule, due to the range of choices and EPA's lack of *a priori* knowledge about which specific choices states will make, EPA analyzed two implementation scenarios designed to achieve the goal rates, which EPA termed the “rate-based” illustrative plan approach and the “mass-based” illustrative plan approach.

EPA estimates that, in 2020, the final rule will yield monetized climate benefits of approximately \$2.8 billion for the rate-based approach and \$3.3 billion for the mass-based approach (3 percent model average)(all dollar amounts are in 2011 dollars). For the rate-based approach, EPA estimated the air pollution health co-benefits in 2020 to be \$0.7 billion to \$1.8 billion for a 3 percent discount rate and \$0.64 billion to \$1.7 billion for a 7 percent discount rate. For the mass-based approach, EPA estimated the air pollution health co-benefits in 2020 to be \$2.0 billion to \$4.8 billion for a 3 percent discount rate and \$1.8 billion to \$4.4 billion for a 7 percent discount rate. According to EPA, the annual, illustrative compliance costs estimated by the integrated planning model and inclusive of demand-side energy efficiency program and participant costs and monitoring, recordkeeping, and reporting costs in 2020, are approximately \$2.5 billion for the rate-based approach and \$1.4 billion for the mass-based approach. EPA estimated the quantified net benefits (the difference between monetized benefits and compliance costs) in 2020 range from \$1.0 billion to \$2.1 billion for the rate-based approach and from \$3.9 billion to \$6.7 billion for the mass-based approach, using a 3 percent discount rate (model average). The final rule includes tables that summarize the monetized benefits, compliance costs, and net benefits for each approach in 2020, 2025, and 2030.

EPA also states that the final rule will have non-monetized benefits, including non-monetized climate benefits; reductions in exposure to ambient nitrogen dioxide and sulfur dioxide; reductions in mercury deposition; ecosystem benefits associated with reductions in emissions of nitrogen oxides, sulfur dioxide, particulate matter, and mercury; and visibility improvement.

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

EPA certified that the final rule will not have a significant economic impact on a substantial number of small entities. EPA determined that the final rule will not impose any requirements on small entities. However, EPA notes that the states will establish emission standards on

existing sources after emission guidelines are promulgated, and it is those requirements that could potentially impact small entities.

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

EPA determined that the final rule does not contain an unfunded mandate of \$100 million or more as described in UMRA and does not significantly or uniquely affect small governments. The final rule imposes specific requirements on state governments that have affected electric generating units, but this burden is estimated to be below \$100 million in any one year. The final rule, according to EPA, does not significantly or uniquely affect small governments because the state governments to which the rule applies are not considered small governments. Therefore, EPA concluded that the final rule is not subject to the requirements of section 202 or section 205 of UMRA.

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

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

On June 18, 2014, EPA published a proposed rule. 79 Fed. Reg. 34,829. On November 4, 2014, EPA published a supplemental notice of proposed rulemaking. 79 Fed. Reg. 65,481. EPA stated that it engaged in outreach to stakeholders and the general public, including direct engagement with the energy and environment officials in states, tribes, and a full range of stakeholders including leaders in the utility power sector, labor leaders, non-governmental organizations, other federal agencies, other experts, community groups, and members of the public. EPA stated that it participated in more than 300 meetings before the rule was proposed and more than 300 after the proposal. EPA stated the outreach prior to proposal, as well as during the public comment period, was designed to solicit policy ideas, concerns, and technical information. EPA also stated that thousands of people participated in EPA's public hearings, webinars, listening sessions, teleconferences, and meetings held all across the country.

EPA stated that it received more than 4.2 million comments on the proposed carbon pollution emission guidelines from a range of stakeholders that included state environmental and energy officials, local government officials, tribal officials, public utility commissioners, system operators, utilities, public interest advocates, and members of the public. EPA also noted that it received comments on many aspects of the proposal and many suggestions for changes that would address issues of concern.

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

The final rule contains information collection requirements under PRA, and EPA submitted the requirements to the Office of Management and Budget (OMB) for approval. The Information Collection Request (ICR) document prepared by EPA has been assigned the EPA ICR number 2503.02.

The final rule imposes specific requirements on state governments with affected EGUs. The information collection requirements are based on the recordkeeping and reporting burden associated with developing, implementing, and enforcing a plan to limit CO<sub>2</sub> emissions from existing sources in the utility power sector, as specifically authorized by section 114 of the Clean Air Act (42 U.S.C. § 7414).

EPA estimated the annual burden for this collection of information for the states as averaged over the first 3 years following promulgation of the final rule to be a range of 505,000 to 821,000 hours at a total annual labor cost of \$35.8 to \$58.1 million. According to the final rule, the lower bound estimate reflects the assumption that some states already have energy efficiency (EE) and renewable energy (RE) programs in place, and the higher bound estimate reflects the overly-conservative assumption that no states have EE and RE programs in place.

EPA estimated the total annual burden for the federal government associated with the state collection of information as averaged over the first 3 years following promulgation of the final rule to be 54,000 hours at a total annual labor cost of \$3.00 million.

#### Statutory authorization for the rule

The final rule states that the statutory authority for the final rule is provided by sections 111, 301, 302, and 307(d) of the Clean Air Act, as amended, (42 U.S.C. §§ 7411, 7601, 7602, 7607(d)(1)(C)), and subject to section 307(d) of the Clean Air Act (42 U.S.C. § 7607(d)).

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

The final rule was determined to be economically significant under the Executive Order and was submitted to OMB for review.

#### Executive Order No. 13,132 (Federalism)

EPA concluded that the final rule may have federalism implications, because it imposes substantial direct compliance costs on state or local governments, and the federal government will not provide the funds necessary to pay those costs. Consistent with this determination, EPA provided a federalism summary impact statement in the final rule. In the final rule, EPA states that it consulted with state and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. In addition, EPA specifically solicited comments from state and local officials, and received comments from over 400 entities representing state and local governments. As required by section 8(a) of Executive Order 13,132, EPA included a certification from its federalism official stating that EPA had met Executive Order 13,132's requirements in a meaningful and timely manner when it sent the draft of the final rule to OMB for review under Executive Order 12,866.