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United States General Accounting Office
Washington, DC 20548

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April 22, 2004

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

The Honorable W.J. "Billy" Tauzin
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Interstate Ozone Transport: Response to Court Decisions on the NO_x SIP Call, NO_x SIP Call Technical Amendments, and Section 126 Rules*

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 "Interstate Ozone Transport: Response to Court Decisions on the NO_x SIP Call, NO_x SIP Call Technical Amendments, and Section 126 Rules" (RIN: 2060-AJ16). We received the rule on April 5, 2004. It was published in the Federal Register as a final rule on April 21, 2004. 69 Fed. Reg. 21604.

The final rule establishes the final full nitrogen oxides (NO_x) budgets for states subject to the NO_x state implementation plan (SIP) Call. The rule also requires Georgia and Missouri to submit SIP revisions meeting the full NO_x SIP Call budgets since they were not required to submit Phase I SIPs. In addition, the rulemaking amends two prior rules under sections 110 and 126 of the Clean Air Act in response to several court decisions. Finally, the rule modifies the Appeal Procedures and the Federal NO_x Budget Trading Program.

Enclosed is our assessment of the 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 indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Stephanie Daigle
Deputy Associate Administrator
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"INTERSTATE OZONE TRANSPORT: RESPONSE TO
COURT DECISIONS ON THE NO_x SIP CALL,
NO_x SIP CALL TECHNICAL AMENDMENTS,
AND SECTION 126 RULES"
(RIN: 2060-AJ16)

(i) Cost-benefit analysis

EPA prepared Regulatory Impact Analyses in connection with the prior rulemakings and these can be found in EPA Docket Nos. OAR-2001-0008 and A-97-43. EPA notes that there is less cost incurred per internal combustion engine than noted in the original RIA that estimated costs for controls of \$100 million, which are now believed to be less than \$33 million. In addition, the cost for controls in Georgia and Missouri are estimated to be \$136 million. Finally, due to the removal of Wisconsin and portions of Alabama, Georgia, Michigan, and Missouri, the costs are lowered by \$146 million.

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

EPA has determined that 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 prepared the required written statement under section 202 of the Act, even though it doubted that the Act would apply, in connection with the prior rulemaking published on October 27, 1998. EPA has concluded that no further analysis is required based on this rulemaking.

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

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

The final rule modifies a previous rulemaking published in the Federal Register on October 27, 1998. 63 Fed. Reg. 57356. Following the issuance of the court decisions discussed in the final rule, EPA held a public hearing on March 15, 2002, and accepted comments for 45 days after the hearing date.

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

The final rule does not contain any information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated pursuant to the authority found at 23 U.S.C. 101 and 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651 et seq.

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

EPA has reviewed the final rule and found that it does not have federalism implications under the order.