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United States Government Accountability Office  
Washington, DC 20548

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B-309401

May 10, 2007

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

The Honorable John D. Dingell  
Chairman  
The Honorable Joe Barton  
Ranking Minority Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Environmental Protection Agency: Clean Air Fine Particle Implementation 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 "Clean Air Fine Particle Implementation Rule" (RIN: 2060-AK74).

The final rule requires states and tribal governments to develop plans to implement the 1997 fine particle (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS) pursuant to the Clean Air Act (CAA). Fine particles and precursor pollutants are emitted by a wide range of sources, including power plants, cars, trucks, and industrial sources. Air quality designations became effective on April 5, 2005, for 39 areas that were not attaining the 1997 PM<sub>2.5</sub> standards. The final rule requires that by April 5, 2008, each state and tribal government having a nonattainment area must submit to EPA an attainment demonstration and have adopted regulations ensuring that the area will attain the standards as expeditiously as practicable, but no later than 2015.

This rule was published in the *Federal Register* as a final rule on April 25, 2007. 72 Fed. Reg. 20,586. We received the rule on April 3, 2007. The *Federal Register* notice provides for two different effective dates, May 29, 2007, and June 25, 2007. See 72 Fed. Reg. 20,586 and 20,663. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the

*Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Since the final rule was not published in the Federal Register until April 25, 2007, we will assume that the correct date for the rule to be final is June 25, 2007.

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 EPA complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. 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

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Louise Wise  
Principal Deputy Associate Administrator  
Environmental Protection Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
"CLEAN AIR FINE PARTICLE IMPLEMENTATION RULE"  
(RIN: 2060-AK74)

(i) Cost-benefit analysis

EPA prepared an assessment of the estimated costs and benefits associated with attaining the 1997 PM<sub>2.5</sub> NAAQS in 2015, incremental to currently promulgated federal and state programs, including, for example, the Clean Air Interstate rule and the Nonroad Diesel rule. The analysis finds that the estimated monetized benefits of attaining the 1997 standards in 2015 are between \$43 billion and \$97 billion annually, and the estimated monetized costs are \$6.9 billion annually. The analysis also states that “because this analysis was intended to compare costs and benefits of attaining alternative standards by fixed dates, it did not attempt to identify for each designated PM<sub>2.5</sub> area measures that may be needed to meet subpart 1 Clean Air Act requirements, such as reasonable available measures and attainment as expeditiously as practicable. It is expected that additional costs and benefits will begin to accrue in earlier years as states comply with these requirements.”

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

EPA certified that the final rule would not have a significant economic impact on a substantial number of small entities. For this reason, EPA did not prepare a Final Regulatory Flexibility Analysis. EPA noted that implementation plans will not directly impose any requirements on small entities, but rather, interprets the obligations established in the CAA for states and tribal governments to submit implementation plans in order to attain the PM<sub>2.5</sub> NAAQS.

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

EPA certified that this final rule does not contain either an intergovernmental or private section mandate, as defined in Title II, of more than \$100 million in any one year.

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

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

On November 1, 2005, EPA published a Notice of Proposed Rulemaking and Request for Comment in the *Federal Register* regarding the proposed rule to implement the fine particle national ambient air quality standards. 70 Fed. Reg. 65,984. About 100 comments were received from private citizens and parties representing industry, state and local governments, environmental groups, and federal agencies. On April 25, 2007, EPA published the final rule in the *Federal Register*, entitled Clean Air Fine Particle Implementation Rule. 72 Fed. Reg. 20,586.

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

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB). EPA noted that in a separate *Federal Register* notice, EPA is requesting comment on the information collection requirements of this rule. The information collection requirements are not enforceable until OMB approves them.

Statutory authorization for the rule

The final rule was promulgated under the authority of 42 U.S.C. §§ 7401, 7408, 7410, 7501-7509a, 7601(a)(1), and 7407(d).

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. 13,132 (Federalism)

EPA concluded that the proposed rule would not have federalism implications. Specifically, EPA stated that the proposed rule would 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, as specified in Executive Order 13,132. However, EPA recognized that states would have a substantial interest in the proposed rule and any corresponding revisions to associated implementation plan requirements. Therefore, “in the spirit of the Executive Order, and consistent with EPA policy to promote communications between EPA and state and local governments,” EPA held a number of calls with representatives of state and local air pollution control agencies and hosted a public hearing in Washington, D.C. in November 2005. Although EPA considered the comments from state and local governments in developing the final rule, EPA concluded that the final rule does not have federalism implications.

#### Executive Order 13,175 (Consultation and Coordination with Tribal Governments)

EPA concluded that the proposed rule would not have "tribal implications" as defined in Executive Order 13,175. Specifically, EPA stated that the proposed rule concerns the requirements for state and tribal implementation plans for attaining the PM<sub>2.5</sub> air quality standards. The CAA provides for states to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Air Rule under the CAA gives tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the PM<sub>2.5</sub> NAAQS, but it leaves to the discretion of the tribe the decision of whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. Although the executive order did not apply to the proposed rule, EPA stated that it did reach out to tribal leaders and environmental staff, but nonetheless concluded that the final rule does not have tribal implications.

#### Executive Order 13,045 (Protection of Children From Environmental Health and Safety Risks)

EPA concluded that this final rule is subject to Executive Order 13,045. EPA complied with this executive order by evaluating the environmental health or safety effects of the planned rule on children and explained why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

#### Executive Order 12,898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)

EPA has determined that the final rule should not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.