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April 10, 2008

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: National Ambient Air Quality Standards for Ozone*

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 “National Ambient Air Quality Standards for Ozone” (RIN: 2060-AN24). We received the rule on March 17, 2008. It was published in the *Federal Register* as a final rule on March 27, 2008. 73 Fed. Reg. 16,436.

Based on its review of the air quality criteria for ozone (O₃) and related photochemical oxidants and natural ambient air quality standards (NAAQS) for O₃, EPA’s final rule revises the primary and secondary NAAQS for O₃ to provide requisite protection of public health and welfare. With regard to the primary standard for O₃, EPA revised the level of the 8-hour standard to 0.075 parts per million (ppm), expressed to three decimal places. With regard to the secondary standard for O₃, EPA revised the current 8-hour standard by making it identical to the revised primary standard. EPA also made conforming changes to the Air Quality Index (AQI) for O₃, setting an AQI value of 100 equal to 0.075 ppm, 8-hour average, and making proportional changes to the AQI values of 50, 150, and 200. The final rule is effective on May 27, 2008.

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 or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
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
"NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE"
(RIN: 2060-AN24)

(i) Cost-benefit analysis

EPA prepared a regulatory impact analysis (cost-benefit analysis) that estimated the costs and monetized human health and welfare benefits of attaining three alternative O₃ NAAQS nationwide. The analysis examined the alternatives of 0.079 ppm, 0.075 ppm, 0.070 ppm, and 0.065 ppm. The analysis considered a limited number of emissions control scenarios that states and Regional Planning Organizations might implement to achieve these alternative O₃ NAAQS. However, the Clean Air Act and judicial decisions make clear that the economic and technical feasibility of attaining ambient standards are not to be considered in setting or revising NAAQS, although such factors may be considered in the development of state plans to implement the standards. For this reason, EPA stated that although a cost-benefit analysis was prepared, the results of the analysis were not considered in the final rule.

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

EPA certified that the final rule will not have a direct “significant economic impact on a substantial number of small entities.” Therefore, EPA did not prepare a regulatory flexibility analysis.

(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 the final rule does not contain either an intergovernmental or private sector mandate, as defined in Title II, of more than \$100 million (currently adjusted for inflation to \$122 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.*

The final rule was issued using the notice and comment procedures contained in 5 U.S.C. § 553. On July 11, 2007, EPA published a Notice of Proposed Rulemaking in the *Federal Register*. 72 Fed. Reg. 37,818. (The schedule for completion of this rulemaking is governed by a consent decree resolving a lawsuit filed in March 2003

by a group of plaintiffs representing national environmental and public health organizations, alleging that EPA had failed to complete this final rule within the period provided by statute. The modified consent decree that currently governs this rulemaking provides that EPA sign for publication notices of proposed and final rulemaking concerning its review of the O₃ NAAQS no later than June 20, 2007, and March 12, 2008, respectively.) EPA received a large number of comments in response to the proposed rule and responds to all those comments in the docket for this rulemaking. EPA responds to significant comments in the final rule.

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

EPA states that the final rule imposes no new information or recordkeeping requirements.

Statutory authorization for the rule

Two sections of the Clean Air Act govern the establishment and revision of the NAAQS, section 108 (42 U.S.C. § 7408) and section 109 (42 U.S.C. § 7409).

Executive Order No. 12,866

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

Executive Order No. 13,132 (Federalism)

EPA concluded that the final rule will not have a substantial direct effect 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.