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May 25, 2005

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

Subject: *Environmental Protection Agency: Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call*

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 “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call” (RIN: 2060-AL76). We received the rule on March 18, 2005. It was published in the Federal Register as a final rule on May 12, 2005. 70 Fed. Reg. 25162.

The final rule, the Clean Air Interstate Rule (CAIR), requires 28 states and the District of Columbia (upwind states) to revise their state implementation plans (SIPs) to include control measures to reduce emissions of sulfur dioxide (SO₂) and/or nitrogen oxide (NO_x). EPA finds that the upwind states contribute significantly to nonattainment of the national ambient air quality standard (NAAQS) for fine particles (PM_{2.5}) and /or 8-hour ozone in downwind states.

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: Louise Wise
Principal 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
"RULE TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER
AND OZONE (CLEAN AIR INTERSTATE RULE); REVISIONS TO ACID RAIN
PROGRAM; REVISIONS TO THE NO_x SIP CALL"
(RIN: 2060-AL76)

(i) Cost-benefit analysis

EPA estimates that the projected annual private incremental costs of the CAIR to the power industry to be \$2.4 billion in 2010 and \$3.6 billion in 2015.

The social costs of this rule are estimated to be \$1.9 billion in 2010 and \$2.6 billion in 2015 assuming a 3-percent discount rate. These costs become \$2.1 billion in 2010 and \$3.1 billion in 2015 assuming a 7-percent discount rate.

The health benefits of the rule in preventing deaths and other serious health effects are monetized as annual benefits of approximately \$73.3 or \$62.6 billion in 2010 (based on a 3-percent or 7-percent discount rate, respectively) and \$101 billion or \$86.3 billion in 2015 (3 percent or 7 percent, respectively). Among the benefits in 2015 are 17,000 fewer premature deaths, 8,700 fewer cases of chronic bronchitis, 22,000 fewer non-fatal heart attacks, 10,500 fewer hospitalizations and 1,700,000 fewer work loss days.

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

EPA states that since the final rule does not establish requirements applicable to small entities but requires states to develop, adopt, and submit state implementation plans, EPA could not predict the effect of the rule on small entities.

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

In the preamble to the final rule, EPA states that it is not reaching a conclusion as to whether a requirement to submit a revised state implementation plan would constitute a federal mandate, as defined in title II of the Act. However, EPA prepared the required statement and consulted with governmental entities as required by the Act if the rule did impose such a mandate.

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

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

Instead of the notice and comment procedures in the Administrative Procedure Act, EPA promulgated this rule using the procedures, which have similar notice and comment procedures, contained in sections 307(d) of the Clean Air Act, as amended, 42 U.S.C. 7607(d). The use of these procedures regarding this rule is mandated by section 307(d)(1)(B) of the Clean Air Act. 42 U.S.C. 7607(d)(1)(K).

On January 30, 2004, EPA published a Notice of Proposed Rulemaking in the Federal Register (69 Fed. Reg. 4566) and a Supplemental Proposal on June 10, 2004 (69 Fed. Reg. 32684). In response to these notices, EPA received a total of 7,100 comments and EPA responds to the significant comments either in the preamble to the final rule or in its rulemaking docket.

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

The final rule contains some additional information collection requirements to already approved information collections. EPA has submitted the required information to the Office of Management and Budget (OMB) for approval. EPA estimates that the recordkeeping and reporting burden to sources resulting from states choosing to participate in a regional cap and trade program are expected to be less than \$42 million annually at the time the monitors are implemented.

Statutory authorization for the rule

The final rule is promulgated under the authority found at 23 U.S.C. 101 and 42 U.S.C. 7401-7671q.

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 states that the final rule does not have federalism implications under the order.