



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-298251

May 10, 2006

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: Inclusion of Delaware and New Jersey in the Clean Air Interstate 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 "Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule" (RIN: 2060-AM95). We received the rule on March 22, 2006. It was published in the Federal Register as a final rule on April 28, 2006. 71 Fed. Reg. 25288.

The final rule includes Delaware and New Jersey in the Clean Air Interstate Rule (CAIR) for fine particles based on EPA's assessment that the states contribute significantly to a downwind state's nonattainment.

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 indicates that 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
"INCLUSION OF DELAWARE AND NEW JERSEY IN THE
CLEAN AIR INTERSTATE RULE"
(RIN: 2060-AM95)

(i) Cost-benefit analysis

EPA conducted a cost-benefit analysis of the final rule. EPA estimates the annual private costs to Delaware and New Jersey are approximately \$30 million in 2010 and \$40 million in 2015.

EPA estimates the benefits attributable to annual SO₂ and NO_x controls for New Jersey and Delaware will be \$630 million of the total annual CAIR program benefits.

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

The Administrator of EPA has certified that the final rule will not have a significant economic impact on a substantial number of small entities. EPA states that the final rule does not establish any requirements attributable to small entities but requires New Jersey and Delaware to develop, adopt, and submit state implementation plans that would achieve the necessary SO₂ and NO_x emission reductions.

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

While EPA does not reach a final conclusion as to whether the rule will impose a mandate of more than \$100 million in any one year on the private sector for the reasons stated above concerning the applicability of the Regulatory Flexibility Act, it has prepared the statement required by the Act.

(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 section 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 May 12, 2005, EPA published a Notice of Proposed Rulemaking in the Federal Register. 70 Fed. Reg. 25162. The comments received are discussed in the preamble to the final rule.

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

The final rule contains an information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. EPA has submitted the required information to OMB including the estimated burden. EPA estimates the burden to be \$263,000, which includes installing and operating the emissions monitoring equipment and reporting the results.

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.