



**United States
General Accounting Office
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Office of the General Counsel

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October 1, 1998

The Honorable John H. Chafee
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Environmental Protection Agency: Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units; Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units

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 "Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units; Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units" (RIN: 2060-AE56). We received the rule on September 10, 1998. It was published in the Federal Register as a final rule on September 16, 1998. 63 Fed. Reg. 49442.

The final rule revises the emission standards for nitrogen oxides contained in the standards of performance for new electric utility steam generating units and industrial-commercial-institutional steam generating units. The final rule also allows owners and operators of affected facilities to meet the quarterly reporting requirements by means of electronic reporting, in lieu of submitting written compliance reports.

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 Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Environmental Protection Agency is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Thomas E. Kelly
Director, Office of Regulatory
Management and Information
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
"REVISION OF STANDARDS OF PERFORMANCE FOR NITROGEN OXIDE
EMISSIONS FROM NEW FOSSIL-FUEL FIRED STEAM GENERATING UNITS;
REVISIONS TO REPORTING REQUIREMENTS FOR STANDARDS OF
PERFORMANCE FOR NEW FOSSIL-FUEL FIRED STEAM GENERATING UNITS"
(RIN: 2060-AE56)

(i) Cost-benefit analysis

EPA conducted a cost-benefit analysis of the impact of the final rule, which was described in the preamble to the Notice of Proposed Rulemaking, 62 Fed. Reg. 36957, and which EPA states has remained unchanged.

EPA estimates that 17 new utility steam generating units and 381 new industrial steam generating units will be built over the next 5 years and would be subject to the final rule's revised standards. The nationwide increase in annualized costs in the fifth year for the projected new electric utility steam generating units is estimated to be about \$40 million for utility steam generating units. The increase for new industrial steam generating units would be about \$41 million in the fifth year.

The revised standards are projected to reduce baseline nitrogen oxides emissions by 25,800 tons/year from utility steam generating units and 20,000 tons/year from industrial steam generating units in the fifth year. This represents an approximate 42 percent reduction in the growth of nitrogen oxide emissions from new utility and industrial steam generating units subject to the revised standards.

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

The Administrator of 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

While the final rule will not impose an intergovernmental mandate of over \$100 million, the rule does impose such a mandate on the private sector. In accordance with the Unfunded Mandates Reform Act, EPA, in the preamble to the final rule,

gives the statutory authority for the rule; a summary of the costs and benefits, in both qualitative and quantitative terms; and a discussion of the regulatory alternatives which EPA considered.

(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 requirements, 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)(G) of the Clean Air Act. 42 U.S.C. § 7607(d)(1)(G).

The EPA published a Notice of Proposed Rulemaking in the Federal Register on July 9, 1997. 62 Fed. Reg. 36948. EPA received 70 comment letters on the proposed rule and met with several industry representatives to discuss their comments in more detail. The comments and EPA's actions taken in response to them are discussed in the final rule's preamble.

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

The final rule does not contain any new or modified information collections which 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 was issued pursuant to the authority of Sections 101, 111, 114, 301, and 407 of the Clean Air Act; 42 U.S.C. §§ 7401, 7411, 7414, 7601, and 7651f.

Executive Order No. 12866

The final rule was determined to be a "significant regulatory action" by the Office of Management and Budget and was reviewed and approved by OMB as complying with the requirements of the Order.

Executive Order No. 12875 (Enhancing the Intergovernmental Partnership)

EPA has found that the final rule may impose a mandate on state, local, or tribal governments and that the federal government will not provide the funds necessary to pay the direct costs incurred by the governments in complying with the mandate. In accordance with the Order, EPA consulted with these governments for their input, and while the rule does not impose direct compliance costs, these entities

will face increased indirect costs in the form of slightly higher prices for electricity and the goods produced in the facilities requiring new boilers subject to the rule. However, compared to the health and environmental benefits to be obtained, EPA has determined that the need to issue the final rule outweighs the potential costs to the governments.