



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-298252

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: Rulemaking on Section 126 Petition From North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program*

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 “Rulemaking on Section 126 Petition From North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program” (RIN: 2060-AM99). We received the rule on March 16, 2006. It was published in the Federal Register as a final rule on April 28, 2006. 71 Fed. Reg. 25328.

The final rule relates to the interstate transport of emissions of NO_x and SO₂ that contribute significantly to nonattainment and maintenance problems with respect to the national ambient air quality standards for fine particulate matter and 8-hour ozone. The rule contains EPA’s final response to the State of North Carolina’s petition submitted under section 126 of the Clean Air Act. Also, EPA is making revisions to the final Clean Air Interstate Rule (CAIR) to clarify certain provisions, correct minor errors, and to take final action on reconsideration of the definition of “electric generating units” as it relates to solid waste incinerators.

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
"RULEMAKING ON SECTION 126 PETITION FROM NORTH CAROLINA
TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND
OZONE; FEDERAL IMPLEMENTATION PLANS TO REDUCE INTERSTATE
TRANSPORT OF FINE PARTICULATE MATTER AND OZONE; REVISIONS TO THE
CLEAN AIR INTERSTATE RULE; REVISIONS TO THE ACID RAIN PROGRAM"
(RIN: 2060-AM99)

(i) Cost-benefit analysis

EPA states that since the federal implementation plans require the same set of air pollution emissions reductions required by the CAIR, EPA is relying on the economic analysis conducted for the CAIR entitled "Regulatory Impact Analysis of the Final Clean Air Interstate Rule" (March 2005). That analysis estimated the annual private costs to be \$2.36 billion in 2010 and \$3.57 billion in 2015.

EPA finds that the annual net benefits would be \$71.4 billion (3-percent discount rate) or \$60.4 billion (7-percent discount rate) in 2010 and \$98.5 billion (3 percent) or \$83.2 billion (7 percent) in 2015.

(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. The majority of small entities are exempted under the rule because the rule only affects sources with a capacity of 25 megawatts or greater.

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

The final rule contains a private sector mandate, as defined in title II, of more than \$100 million in any one year. EPA has prepared the required statement in conjunction with the final rule.

(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).

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

EPA states that the final rule does not contain any new information collections that 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 is promulgated under the authority found in 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.