



United States Government Accountability Office
Washington, DC 20548

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August 17, 2011

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals*

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 “Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals” (RIN: 2060-AP50). We received the rule on July 11, 2011. It was published in the *Federal Register* as a final rule on August 8, 2011, with an effective date of October 7, 2011. 76 Fed. Reg. 48,208.

The final rule limits the interstate transport of emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂) that contribute to harmful levels of fine particle matter (PM_{2.5}) and ozone in downwind states. EPA is identifying emissions within 27 states in the eastern United States that significantly affect the ability of downwind states to attain and maintain compliance with the 1997 and 2006 fine particulate matter national ambient air quality standards (NAAQS) and the 1997 ozone NAAQS. Also, EPA is limiting these emissions through Federal Implementation Plans (FIPs) that regulate electric generating units (EGUs) in the 27 states. The final rule will substantially reduce adverse air quality impacts in downwind states from emissions transported across state lines. In conjunction with other federal and state actions, it will help assure that all but a handful of areas in the eastern part of the country

achieve compliance with the current ozone and PM_{2.5} NAAQS by the deadlines established in the Clean Air Act (CAA or Act).

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 of the procedural steps taken indicates that 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing 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
"FEDERAL IMPLEMENTATION PLANS:
INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER
AND OZONE AND CORRECTION OF SIP APPROVALS"
(RIN: 2060-AP50)

(i) Cost-benefit analysis

EPA completed a cost-benefit analysis. According to EPA, the social costs are \$0.81 billion in 2007 dollars at a discount rate of 3 percent or 7 percent. The total monetized benefits and net benefits range between \$120 to \$280 billion in 2007 dollars at a discount rate of 3 percent or 7 percent.

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

After considering the economic impacts of this final rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities (No SISNOSE). EPA's certification is based on the economic impact of this final rule to all affected small entities across all industries affected.

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

EPA states that the final rule contains a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared a written statement under section 202 of the UMRA.

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

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

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On August 2, 2010, EPA published a proposed rule to identify and limit NO_x and SO₂ emissions within 32 states in the eastern, midwestern, and southern United States that affect the ability of downwind states to attain and

maintain compliance with the 1997 and 2006 PM_{2.5} NAAQS and the 1997 ozone NAAQS. 75 Fed. Reg. 45,210.

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

EPA states that it is required to document the information collection burden imposed by the final rule on industry, states, and EPA in an information collection request (ICR). EPA states that the ICR describes the information collection requirements associated with the final rule and estimates the incremental costs of compliance with all such requirements, such as the requirement for industry to monitor, record, and report emission data to EPA. According to EPA, the ICR for the final rule has been submitted for approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., and the information collection requirements it documents are not enforceable until such approval has been granted. Additionally, EPA explains that an ICR was also submitted to OMB in support of the proposed final rule and no adverse comment was received by EPA on either the information collection requirements or their associated cost estimates as described in that document.

Statutory authorization for the rule

EPA states that the statutory authority for this action is provided by section 110(a)(2)(D) of the CAA, often referred to as the “good neighbor” provision of the Act. 42 U.S.C. § 7401 et seq., as amended.

Executive Order No. 12,866 (Regulatory Planning and Review)

EPA states that the final rule is an “economically significant regulatory action” because it is likely to have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Accordingly, EPA submitted this action to OMB for review under E.O. 12,866 and E.O. 13,563 and documented any changes in response to OMB recommendations.

Executive Order No. 13,132 (Federalism)

EPA states that the final rule will not have substantial direct effects 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 and, therefore, does not have federalism implications.