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May 27, 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: Standards of Performance for New and Existing Stationary Sources: Electric Utility 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 “Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units” (RIN: 2060-AJ65). We received the rule on March 24, 2005. It was published in the Federal Register as a final rule on May 18, 2005. 70 Fed. Reg. 28606.

The final rule finalizes the Clean Air Mercury Rule (CAMR) and establishes standards of performance for mercury for new and existing coal-fired electric utility steam generating units, as defined in the Clean Air Act section 111. The rule establishes a mechanism by which mercury emissions from new and existing coal-fired units are capped at specified, nation-wide levels. A first phase cap of 38 tons per year (tpy) becomes effective in 2010, and a second phase cap of 15 tpy becomes effective in 2018. Facilities must demonstrate compliance with the standard by holding one “allowance” for each ounce of mercury emitted in any given year. Allowances are readily transferable among all regulated facilities. EPA states that the “cap-and-trade” approach to limiting mercury emission is the most cost-effective way to achieve reductions in mercury emissions from the power sector.

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
"STANDARDS OF PERFORMANCE FOR NEW AND EXISTING STATIONARY
SOURCES: ELECTRIC UTILITY STEAM GENERATING UNITS"
(RIN: 2060-AJ65)

(i) Cost-benefit analysis

EPA conducted a cost-benefit analysis of the final rule and found that the projected annual costs to the power industry are \$160 million in 2010, \$100 million in 2015, and \$750 million in 2020.

The range of the monetized annual benefits under a 10- to 20-year lag period is approximately \$0.4 million to \$3.0 million using a 3-percent discount rate.

The social costs of the final rule are estimated to be approximately \$848 million in 2020 using a 3 percent discount rate.

EPA notes that while the final rule is expected to result in a net cost to society, it achieves a significant reduction in mercury emissions by domestic sources.

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

EPA prepared an Initial and Final Regulatory Flexibility Analysis in connections with the proposed rule and the final rule, respectively. EPA states that the final rule does not establish requirements applicable to small entities but requires states to develop plans to achieve the necessary mercury emission reductions. EPA also concludes from both analyses that the final rule would 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

In the preamble to the final rule, EPA states that if the provisions of the Act applied, the final rule would impose an unfunded mandate of more than \$100 million in any one year. EPA prepared the required statement and consulted with governmental entities. Therefore, EPA states it is unnecessary to reach a conclusion as to the applicability of 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)(C) of the Clean Air Act. 42 U.S.C. 7607(d)(1)(C).

On January 30, 2004, EPA published a Notice of Proposed Rulemaking in the Federal Register (69 Fed. Reg. 4652) followed by a Supplemental Notice on March 16, 2004 (69 Fed. Reg. 12398). In response, EPA received approximately 500,000 comments and EPA discusses the most significant comments 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 notes in the preamble to the final rule that it is still working on the projected cost and hour burden for the collection. When these figures are completed, EPA will make them available to the public and forward them to OMB.

Statutory authorization for the rule

The final rule is promulgated under the authority found at 42 U.S.C. 7401, 7403, 7426, and 7601.

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget 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.