



United States Government Accountability Office
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March 2, 2012

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: National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional 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 "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units" (RINs: 2060-AP52; 2060-AR31). We received the rule on December 22, 2011. It was published in the *Federal Register* as a final rule on February 16, 2012, with an effective date of April 16, 2012. 77 Fed. Reg. 9304.

The final rule revises standards of performance in response to a voluntary remand of a final rule. Specifically, EPA is amending new source performance standards (NSPS) after analysis of the public comments it received. EPA is also finalizing several minor amendments, technical clarifications, and corrections to existing NSPS provisions for fossil fuel-fired electric generating units (EGUs) and large and small industrial-commercial-institutional steam generating units. Additionally, the

final rule establishes national emission standards for hazardous air pollutants (NESHAP) that will require coal- and oil-fired EGUs to meet hazardous air pollutant (HAP) standards reflecting the application of the maximum achievable control technology. The final rule protects air quality and promotes public health by reducing emissions of the HAP listed in the Clean Air Act (CAA) section 112(b)(1).

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
"NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
FROM COAL- AND OIL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS
AND STANDARDS OF PERFORMANCE FOR FOSSIL-FUEL-FIRED ELECTRIC
UTILITY, INDUSTRIAL-COMMERCIAL-INSTITUTIONAL, AND SMALL
INDUSTRIAL-COMMERCIAL-INSTITUTIONAL STEAM GENERATING UNITS"
(RINS: 2060-AP52; 2060-AR31)

(i) Cost-benefit analysis

EPA estimated the costs and benefits of the final rule. EPA estimates that this final rule will yield annual monetized benefits (in 2007 dollars (\$)) of between \$37 to \$90 billion using a 3 percent discount rate and \$33 to \$81 billion using a 7 percent discount rate. EPA states that the great majority of the estimates are attributable to co-benefits from reductions in PM_{2.5}-related mortality. According to EPA, the annual social costs, approximated by the sum of the compliance costs and monitoring and reporting costs, are \$9.6 billion (2007 \$) and the annual quantified net benefits (the difference between benefits and costs) are \$27 to \$80 billion using a 3 percent discount rate or \$24 to \$71 billion using a 7 percent discount rate.

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

EPA performed a screening analysis for impacts on small entities by comparing compliance costs to sales/revenues (e.g., sales and revenue tests) and prepared a Final Regulatory Flexibility Analysis (FRFA) that discusses alternative regulatory or policy options that minimize the rule's small entity impacts.

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

EPA has determined 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 entitled "Unfunded Mandates Reform Act Analysis" under UMRA section 202 that is within the regulatory impact analysis (RIA).

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

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

On May 3, 2011, EPA published a proposed a notice of proposed rulemaking to address emissions of toxic air pollutants from coal and oil-fired electric generating units as required by the CAA. 76 Fed. Reg. 24,976. EPA received over 900,000 comments from members of the public on the proposed rule, which it states is substantially more than for any other prior regulatory proposal.

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

EPA states that the information collection requirements in the final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Act. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2137.06.

Statutory authorization for the rule

EPA states that the final rule is authorized by the Clean Air Act, section 112.

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

EPA states that this action 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 Executive Orders 12,866 and 13,563 and notes that any changes in response to OMB recommendations have been documented in the docket for this action.

Executive Order No. 13,132 (Federalism)

EPA has concluded that this action may have federalism implications, because it may impose substantial direct compliance costs on state or local governments, and the federal government will not provide the funds necessary to pay those costs. Accordingly, EPA has provided a federalism summary impact statement as required by section 6(b) of Executive Order 13,132.