



Office of the General Counsel

B-282814

June 9, 1999

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: Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Environmental Protection Agency (EPA), entitled "Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport" (RIN: 2060-AH88). We received the rule on May 10, 1999. It was published in the Federal Register as a final rule on May 25, 1999. 64 Fed. Reg. 28250.

In accordance with section 126 of the Clean Air Act, the rule contains EPA's final action on petitions filed by eight northeastern states seeking to mitigate significant transport of nitrogen oxides (NO<sub>x</sub>), one of the main precursors of ground-level ozone, across state lines. In the rule, EPA determines that portions of six of the petitions are technically meritorious. Those portions will be automatically deemed granted or denied at certain later dates pending actions by the states and EPA regarding state submittals in response to the final NO<sub>x</sub> state implementation plan call.

EPA intends to implement the section 126 control remedy through a federal NO<sub>x</sub> Budget Trading Program, the details of which will be promulgated by July 15, 1999.

On May 25, 1999, the United States Court of Appeals for the District of Columbia Circuit issued an order granting a partial stay of the submission of revised state implementation plans pending further order of the Court. State of Michigan, Michigan Department of Environmental Quality and State of West Virginia, Division of Environmental Protection v. Environmental Protection Agency (No. 98-1497).

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 Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Sincerely yours,

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  
ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
"FINDINGS OF SIGNIFICANT CONTRIBUTION AND RULEMAKING  
ON SECTION 126 PETITIONS FOR PURPOSES OF  
REDUCING INTERSTATE OZONE TRANSPORT"  
(RIN: 2060-AH88)

(i) Cost-benefit analysis

EPA has prepared a Regulatory Impact Analysis for the final NO<sub>x</sub> state implementation plan call and section 126 petitions. It concludes that the national annual cost of possible state actions to comply is approximately \$1.7 billion. This estimate will be revised following the promulgation of the trading program.

In terms of improvements in health, visibility, and ecosystem protection, the benefits estimated from the NO<sub>x</sub> state implementation plan call, that EPA quantified and monetized, range from \$1.1 billion to \$4.2 billion. According to EPA, due to practical limitations, all potential benefits cannot be monetized or quantified.

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

In connection with the issuance of the final rule, EPA prepared Initial and Final Regulatory Flexibility Analyses and convened a Small Business Advocacy Panel. The final analysis contains the required information including the size and number of small entities impacted by the final rule. EPA also discusses the steps it took to reduce the impact on small entities. One step was to limit the small entities covered by the rule to large electric generating units and large non-electric generating units. By doing this, EPA has reduced by over 85 percent the number of small entities affected.

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

EPA has determined that the final rule could result in the establishment of enforceable mandates, as defined in the Act, directly applicable to sources (including sources owned by state and local governments) that would result in costs greater than \$100 million in any one year. Therefore, EPA has prepared the required written statement concerning the final rule that discusses the economic assessments, estimates, and alternatives 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, the 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 rules pertaining to interstate pollution abatement is mandated by section 307(d)(1)(N) of the Clean Air Act.

On October 21, 1998, EPA issued a Notice of Proposed Rulemaking regarding the petitions filed by numerous northeastern states. 63 Fed. Reg. 56291. This was followed by the issuance of a Supplemental Notice of Proposed Rulemaking dated March 3, 1999. 64 Fed. Reg. 10342. The preamble to the final rule contains a discussion of the comments generated by the proposed rules.

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

EPA notes in the preamble to the final rule that the information collections contained in the final rule will be submitted to the Office of Management and Budget when the NO<sub>x</sub> trading portion of the section 126 rulemaking is promulgated.

Statutory authorization for the rule

The final rule was issued pursuant to the authority of the Clean Air Act, as amended, particularly section 126, 42 U.S.C. § 7401 et seq.

Executive Order No. 12866

The final rule was found to be an “economically significant” regulatory action under Executive Order No. 12866 and was reviewed and approved by the Office of Management and Budget as complying with the requirements of the Order.