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January 28, 2013

The Honorable Barbara Boxer
Chairman
The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate

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

Subject: *Environmental Protection Agency: National Ambient Air Quality Standards for Particulate Matter*

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 Ambient Air Quality Standards for Particulate Matter” (RIN: 2060-AO47). We received the rule on January 9, 2013. It was published in the *Federal Register* as a final rule on January 15, 2013, with an effective date of March 18, 2013. 78 Fed. Reg. 3086.

The final rule makes revisions to the suite of standards for particulate matter (PM) to provide requisite protection of public health and welfare and to make corresponding revisions to the data handling conventions for PM and to the ambient air monitoring, reporting, and network design requirements. EPA is also making revisions to the prevention of significant deterioration (PSD) permitting program with respect to the national ambient air quality standards (NAAQS) revisions.

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 AMBIENT AIR QUALITY STANDARDS
FOR PARTICULATE MATTER"
(RIN: 2060-AO47)

(i) Cost-benefit analysis

In setting the NAAQS, the EPA may not consider the costs of implementing the standards. This was confirmed by the United States Supreme Court in *Whitman v. American Trucking Associations*, 531 U.S. 457, 465-472, 475-76 (2001). As has traditionally been done in NAAQS rulemaking, the EPA has conducted a Regulatory Impact Analysis (RIA) to provide the public with information on the potential costs and benefits of attaining several alternative PM_{2.5} standards. In NAAQS rulemaking, the RIA is done for informational purposes only, and the final decisions on the NAAQS in this rulemaking are not in any way based on consideration of the information or analyses in the RIA. EPA notes that the RIA fulfills the requirements of Executive Orders 13,563 and 12,866. According to EPA, the summary of the RIA estimates benefits ranging from \$4,000 million to \$9,100 million at a 3 percent discount rate and \$3,600 million to \$8,200 million at a 7 percent discount rate in 2020 and costs ranging from \$53 million to \$350 million per year at a 7 percent discount rate.

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

EPA certifies that this action will not have a significant economic impact on a substantial number of small entities and notes that this final rule will not impose any requirements on small entities. Rather, EPA states that this rule establishes national standards for allowable concentrations of particulate matter in ambient air as required by section 109 of the Clean Air Act (CAA). EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

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

EPA states that this action contains no federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for state, local, or tribal governments or the private sector. According to EPA, the action imposes no

enforceable duty on any state, local, or tribal government or the private sector beyond those duties already established in the CAA. Therefore, EPA believes this action is not subject to the requirements of sections 202 or 205 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 rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. On June 29, 2012, EPA published a proposed rule entitled “National Ambient Air Quality Standards for Particulate Matter” 77 Fed. Reg. 38,973. EPA received a large number of comments on its proposed decisions with regard to secondary PM standards, with the large majority of those comments focusing on the proposal to set a distinct standard to protect against visibility impairment. EPA responds to comments received on the proposal and discusses the rationale behind the Administrator’s final decision in the final rule.

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

EPA states that the information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act and the information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document prepared by EPA for these revisions to part 58 has been assigned EPA ICR number 0940.26. The information collected and reported under 40 C.F.R. part 58 is needed to determine compliance with the NAAQS, to characterize air quality and associated health impacts, to develop emissions control strategies, and to measure progress for the air pollution program. The amendments finalized in this rule will revise the network design requirements for PM_{2.5} monitoring sites, resulting in the movement of 21 monitors to established near-road monitoring stations by January 1, 2015. The incremental burden associated with moving these 21 monitors that are required in 40 C.F.R. part 58 (this is a onetime cost of relocating the monitors) is \$28,570.

EPA notes that the information collected under 40 C.F.R. part 53 (e.g., test results, monitoring records, instruction manual, and other associated information) is needed to determine whether a candidate method intended for use in determining attainment of the NAAQS in 40 C.F.R. part 50 will meet the design, performance, and/or comparability requirements for designation as a Federal Reference Method (FRM) or Federal Equivalent Methods (FEM). EPA does not expect the number of FRM or FEM determinations to increase over the number that is currently used to estimate burden associated with PM₁₀, PM_{2.5}, or PM_{10-2.5} FRM/FEM determinations provided in the current ICR for 40 C.F.R. part 53 (EPA ICR numbers 0940.24). As such, EPA believes that no change in the burden estimate for 40 C.F.R. part 53 has been made as part of this rulemaking.

Statutory authorization for the rule

EPA states that the final rule is authorized by 42 U.S.C. §§ 7408-7409.

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

EPA states that this is an “economically significant regulatory action” because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, EPA submitted this action to OMB for review and notes that any changes made in response to OMB recommendations have been documented in the docket for this action.

Executive Order No. 13,132 (Federalism)

EPA states that this action does not have federalism implications, 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. EPA notes that the final rule does not alter the relationship between the federal government and the states regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish and review NAAQS; however, CAA section 116 preserves the rights of states to establish more stringent requirements if deemed necessary by a state. Furthermore, EPA believes that this final rule does not impact CAA section 107, which establishes that the states have primary responsibility for implementation of NAAQS. Finally, as noted by EPA’s UMRA analysis, this rule does not impose significant costs on state, local, or tribal governments or the private sector. Thus, EPA states that Executive Order 13,132 does not apply to this action. However, as also noted in its analysis on UMRA, the EPA recognizes that states will have a substantial interest in this rule and any corresponding revisions to associated air quality surveillance requirements, 40 C.F.R. part 58.