



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-320028

July 6, 2010

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

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

Subject: *Environmental Protection Agency: Primary National Ambient Air Quality Standard for Sulfur Dioxide*

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 “Primary National Ambient Air Quality Standard for Sulfur Dioxide” (RIN: 2060-AO48). We received the rule on June 9, 2010. It was published in the *Federal Register* as a final rule on June 22, 2010. 75 Fed. Reg. 35,520.

The final rule revises the primary national ambient air quality standard (NAAQS) for oxides of sulfur as measured by sulfur dioxide (SO₂). Specifically, in the final rule, EPA is establishing a new 1-hour SO₂ standard at a level of 75 parts per billion, based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. The final rule also revokes both the existing 24-hour and annual primary SO₂ standards. The final rule is effective on August 23, 2010.

In the rule, EPA states that it is revising the primary SO₂ NAAQS to provide requisite protection of public health with an adequate margin of safety. EPA also states that the Clean Air Act and judicial decisions make clear that the economic and technical feasibility of attaining the national ambient standards cannot be considered in setting or revising NAAQS, although such factors may be considered in the development of state implementation plans to implement the standards.

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

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"PRIMARY NATIONAL AMBIENT AIR QUALITY
STANDARD FOR SULFUR DIOXIDE"
(RIN: 2060-AO48)

(i) Cost-benefit analysis

EPA stated that the Clean Air Act and judicial decisions make clear that the economic and technical feasibility of attaining the national ambient standards cannot be considered in setting or revising NAAQS, although such factors may be considered in the development of state implementation plans to implement the standards. Consequently, although EPA performed a cost-benefit analysis of the final rule, EPA did not consider the analysis in developing this final rule.

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

EPA certified that this final rule will 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

EPA concluded that this final rule does not contain 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.

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

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

This final rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. EPA issued a Notice of Proposed Rulemaking on December 8, 2009, Primary National Ambient Air Quality Standard for Sulfur Dioxide. 74 Fed. Reg. 64,810. EPA received various comments on the proposed rule and responded to those comments in the final rule.

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

This final rule contains information collection requirements that have been submitted for review to the Office of Management and Budget (OMB) as required by the Act.

Statutory authorization for the rule

EPA stated that sections 108 and 109 of the Clean Air Act govern the establishment and revision of National Ambient Air Quality Standards, *see* 42 U.S.C. § 7409(b)(1).

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

EPA determined that this final rule is “economically significant” because it is likely to have an annual effect on the economy of \$100 million or more. EPA submitted this rule to the Office of Management and Budget for review and documented OMB changes.

Executive Order No. 13,132 (Federalism)

EPA concluded that this final rule does not have federalism implications; it 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.