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July 19, 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: Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations*

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 “Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations” (RIN: 2060-AJ31). We received the rule on June 28, 2005. It was published in the Federal Register as a final rule on July 6, 2005. 70 Fed. Reg. 39104.

The final rule addresses the U.S. Court of Appeals for the District of Columbia Circuit’s ruling in American Corn Growers Ass’n v. EPA, 291 F.3d 1 (D.C. Cir. 2002) concerning EPA’s regional haze rule promulgated on July 1, 1999. The final rule also contains guidelines for implementation of the Best Available Retrofit Technology (BART) requirements under the regional haze rule.

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 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
"REGIONAL HAZE REGULATIONS AND GUIDELINES FOR BEST AVAILABLE
RETROFIT TECHNOLOGY (BART) DETERMINATIONS"
(RIN: 2060-AJ31)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis of the final rule which showed the net annual benefits (benefits less costs) to range from \$1.9 billion to \$12.0 billion in 2015.

The projected annual private incremental costs to the power industry range from \$253 to \$896 million in 2015. EPA's monetized annual benefits range from \$2.2 billion to \$14.3 billion in 2015.

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

EPA has determined that the final rule will not have a significant economic impact on a substantial number of small entities because the rule applies to states, not 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 were applied, the final rule would impose an unfunded mandate of more than \$100 million in any one year. While EPA does not reach a final conclusion regarding the applicability of the Act, it has prepared the required statement as a part of its Regulatory Impact Analysis.

(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 haze and visibility is mandated by section 307(d)(1)(j).

Following the U.S. Court of Appeals for the District of Columbia Circuit's decision in American Corn Growers Ass'n v. EPA (291 F.3d 1)(D.C. Circuit 2002) concerning EPA's regional haze final rule published on July 1, 1999 (64 Fed. Reg. 35714), EPA published a Notice of Proposed Rulemaking on May 5, 2004. 69 Fed. Reg. 25183. The comments received in response to that proposed rule and those received previously regarding a proposed rule dealing with BART (66 Fed. Reg. 38108, July 20, 2001) are discussed in the preamble to the final rule.

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

The final rule does not impose any new information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority found in 23 U.S.C. 101 and 42 U.S.C. 7410 – 7671q.

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

EPA has concluded that the final rule will not have federalism implications because it will not have substantial direct effects on the states, nor substantially alter the relationship or the distribution of power and responsibilities between the states and the federal government.