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United States Government Accountability Office
Washington, DC 20548

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February 24, 2010

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

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

Subject: *Environmental Protection Agency: Primary National Ambient Air Quality Standards for Nitrogen 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 Standards for Nitrogen Dioxide” (RIN: 2060-AO19). We received the rule on January 27, 2010. It was published in the *Federal Register* as a final rule on February 9, 2010. 75 Fed. Reg. 6474. The final rule is effective on April 12, 2010.

The final rule revises the primary nitrogen dioxide national ambient air quality standards in order to provide requisite protection of public health. The final rule establishes a new 1-hour standard at a level of 100 ppb, based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations, to supplement the existing annual standard. The final rule also establishes requirements for a nitrogen dioxide monitoring network that will include monitors at locations where maximum nitrogen dioxide concentrations are expected, including within 50 meters of major roadways, as well as monitors sited to measure the area-wide nitrogen dioxide concentrations that occur more broadly across communities.

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 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
"PRIMARY NATIONAL AMBIENT AIR QUALITY
STANDARDS FOR NITROGEN DIOXIDE"
(RIN: 2060-AO19)

(i) Cost-benefit analysis

EPA prepared a regulatory impact analysis of the potential costs and benefits associated with the final rule. However, the Clean Air Act and judicial decisions do not permit EPA to consider the economic and technical feasibility of attaining ambient air standards, so EPA did not consider the results of the cost-benefit analysis in developing the 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. This is because the final rule will not impose any requirements on 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 determined 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.

EPA published a general call for information for its review of the air quality criteria for oxides of nitrogen and the nitrogen dioxide national ambient air quality standards (NAAQS) on December 9, 2005. 70 Fed. Reg. 73,236. EPA made its draft Integrated Review Plan for the Primary National Ambient Air Quality Standards for Nitrogen Dioxide available for public comment in February 2007, and the draft was discussed by the Clean Air Scientific Advisory Committee (CASAC) via a publicly accessible teleconference on May 11, 2007. At a public meeting on October 24-25, 2007, CASAC reviewed the first draft of the Integrated Scientific Assessment for Oxides of Nitrogen-Health Criteria (ISA) and the Nitrogen Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment. EPA developed a second

draft of the ISA and a first draft of the Risk and Exposure Assessment to Support the Review of the Nitrogen Dioxide Primary National Ambient Air Quality Standard (REA), based on comments received from CASAC and the public. The second draft of the ISA and the first draft of the REA were reviewed by CASAC at a public meeting on May 1-2, 2008. Based on the comments from CASAC and the public, EPA released the final ISA in July of 2008, and a second draft of the REA, which was released in two parts in August and October of 2008. The second draft of the REA was the subject of CASAC reviews at public meetings on September 9-10, 2008, and October 22, 2008. EPA prepared a final version of the REA, which included a new policy assessment chapter, and CASAC discussed the final version during a public teleconference on December 5, 2008.

EPA published a notice of proposed rulemaking in the *Federal Register* on June 26, 2009. 74 Fed. Reg. 34,404. EPA received numerous comments on the proposed rule, and EPA responded to those comments in the final rule. 75 Fed. Reg. 6474.

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

The final rule contains information collection requirements under the Paperwork Reduction Act, and those requirements have been submitted to the Office of Management and Budget for approval. The requirements have been assigned EPA ICR number 2358.02. The requirements in the final rule revise the technical requirements for nitrogen dioxide monitoring sites, require the siting and operation of additional nitrogen dioxide ambient air monitors, and the reporting of the collected ambient nitrogen dioxide monitoring data to EPA's Air Quality System. EPA estimates that the requirements will have an annual average reporting burden of \$3,261,007 when averaged over the first 3 years.

Statutory authorization for the rule

The final rule is authorized by sections 108 and 109 of the Clean Air Act, codified at 42 U.S.C. §§ 7408-7409.

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

The final rule was determined to be a "significant regulatory action" and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

EPA determined that this final rule does not have federalism implications, because 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. In addition, EPA determined that this final rule does not impose significant costs on state, local, or tribal governments or the private sector.