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Office of the General Counsel

B-275770

January 3, 1997

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: Nitrogen Oxides Emission Reduction Program

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 "Nitrogen Oxides Emission Reduction Program" (RIN: 2060-AF48). We received the rule on December 13, 1996. It was published in the Federal Register as a final rule on December 19, 1996. 61 Fed. Reg. 67111.

The final rule promulgates standards for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act by establishing nitrogen oxides emission limitations for certain coal-fired electric utility units and revising nitrogen oxides emission limitations for others as specified in section 407(b)(2) of the Act.

The rule is effective on the date of publication, December 19, 1996, which is less than the 60-day delay in the effective date of a major rule required by the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. § 801. Upon contacting officials at EPA, we have been advised that the use of an immediate

effective date was an oversight. EPA will publish a corrected notice in the Federal Register which will contain an effective date with the required 60-day delay.

Enclosed is our assessment of the EPA's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates, with the exception noted above, that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Environmental Protection Agency is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Robert P. Murphy  
General Counsel

Enclosure

cc: 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  
THE ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
"NITROGEN OXIDES EMISSION REDUCTION PROGRAM"  
(RIN: 2060-AF48)

(i) Cost-benefit analysis

The Regulatory Impact Analysis which was performed in connection with this final rule discusses the five options which EPA considered and the costs and benefits associated with each option. EPA selected option 4 which revises the Group 1 boiler limits and establishes limits for all Group 2 boilers except cyclones with a capacity of 155 MWe or less, wet bottoms with a capacity of 65 MWe or less, stockers and FBC boilers. The total expenditures from the implementation of option 4 is estimated at \$204 million per year starting in the year 2000 resulting in an nitrogen oxide reduction of 890,000 tons per year with a cost effectiveness of \$229 per ton.

(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. Under the Small Business Administration's size threshold for small electric service companies of 4 million megawatt hours per year, there are 700 small utilities of which only 64 are subject to the final rule. Only 15 of these utilities are expected to incur compliance costs. While the financial impact of compliance will be greater for these firms than for large or medium utilities, the impact is not significant as measured by the change in return on equity or return on assets.

(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 rule contains a federal mandate that will result in expenditures of \$100 million or more for state, local, and tribal governments, or the private sector. In compliance with section 202 of the Unfunded Mandates Reform Act, EPA prepared a written statement, including a cost benefit analysis, assessing the impact of the rule, which it published in the preamble to the final rule.

EPA points out that while there are no federal funds to assist State, local, and tribal governments in meeting these costs, title V of the Clean Air Act authorizes these entities to collect permitting fees from utilities to cover all costs of developing and

issuing title V operating permits, including Acid Rain provisions. Utilities may recover costs incurred in complying with the rule by passing them on to ratepayers.

Consistent with the intergovernmental provisions of sections 203 and 204 of the Act, EPA involved state, local and business representatives in the public hearing and the submission of comments in developing the rule. In addition, EPA solicited comments from the 25 state and municipality-owned utilities, as well as their elected officials, after providing them a summary of the proposed rule and its estimated impact.

Section 205 of the Act requires agencies to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. In the preamble to the final rule, EPA discusses five options it considered and its reasons why the approach used in the final rule was considered the most cost-effective, least burdensome alternative that is consistent with the objectives of the rule.

(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 the promulgation or revision of regulations under subchapter IV-A of the Act relating to the control of acid deposition is mandated by section 307(d)(1)(F) of the Act. (42 U.S.C. § 7607(d)(1)(F)).

EPA published a Notice of Proposed Rulemaking on January 19, 1996 (61 Fed. Reg. 1442), and conducted a public hearing on February 8, 1996 on the proposed rule. The comment period, which was originally to expire on March 4, 1996, was extended to March 19, 1996.

EPA received approximately 100 comments regarding the proposed rule and the preamble to the final rule discusses the comments received and any action taken as a result of the comments.

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

Over the next 3 years, the final rule does not impose any new information collection requirements subject to the Paperwork Reduction Act not already required by current regulations. Prior to the year 2000, EPA will submit to the Office of Management and Budget an Information Collection Request renewal which will

include any additional burden hours imposed by the final rule for Group 2 boilers compliance.

#### Statutory authorization for the rule

EPA has cited section 407(b)(2) of the Clean Air Act (42 U.S.C. § 7651f(b)(2)), as amended, as authority for the issuance of the final rule.

#### Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget under the Executive Order as a "significant regulatory action." The Office of Information and Regulatory Affairs of OMB approved the final rule as complying with the requirements of the Order based on the information supplied by EPA, including a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule.

In its submission, EPA did not identify any other statute or executive order imposing procedural requirements relevant to the final rule.