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March 31, 2011

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

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

Subject: *Environmental Protection Agency: National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters*

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 Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters” (RIN: 2060-AQ25). We received the rule on February 25, 2011. It was published in the *Federal Register* as a final rule on March 21, 2011. 76 Fed. Reg. 15,608.

The final rule establishes emission standards that will require industrial, commercial, and institutional boilers and process heaters located at major sources to meet hazardous air pollutants standards reflecting the application of the maximum achievable control technology. The final rule protects air quality and promotes public health by reducing emissions of the hazardous air pollutants listed in section 112(b)(1) of the Clean Air Act. The final rule is effective on May 20, 2011.

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 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
FOR MAJOR SOURCES: INDUSTRIAL, COMMERCIAL,
AND INSTITUTIONAL BOILERS AND PROCESS HEATERS"
(RIN: 2060-AQ25)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis in conjunction with the final rule. EPA determined the estimated social costs of the final rule are \$1.5 billion based on estimated compliance costs associated with the final rule and the predicted change in prices and production in the affected industry. EPA determined that the benefits of the final rule will be related to the reductions in HAP, PM_{2.5}, and SO₂ emissions. EPA was unable to monetize the benefits associated with the HAP emissions reductions, but EPA was able to monetize the benefits associated with the PM_{2.5}, and SO₂ emissions reductions. EPA estimated the monetized benefits in 2014 associated with the implementation of the final rule to range from \$22 billion to \$54 billion using a 3-percent discount rate, or from \$20 billion to \$49 billion when using a 7-percent discount rate.

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

EPA prepared an initial regulatory flexibility analysis for the proposed rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities. EPA stated that the proposed rule contained provisions consistent with four of the Panel's recommendations. In response to the initial regulatory flexibility analysis, EPA received comments provided by the Small Business Administration (SBA) and other comments generally supporting SBA's comments. The comments included the following: EPA should have adopted a health-based compliance alternative (HBCA) which provides alternative emissions limits for threshold chemicals; EPA should have adopted additional subcategories; EPA should have minimized facility monitoring and reporting requirements; EPA should not have proposed the energy audit requirement; EPA's proposed emissions standards are too stringent; and EPA should provide more flexibility for emissions averaging.

EPA also prepared a final regulatory flexibility analysis in conjunction with the final rule. In response to the comments, EPA made the following changes to the final rule: EPA adopted additional subcategories; EPA consolidated the subcategories for

units combusting various types of solid fuels; EPA decreased monitoring and testing costs by eliminating the CO CEMS requirement for units greater than 100 mmBtu/hr and changing the dioxin testing requirement to a one-time test; and EPA finalized emission limits that are less stringent than the proposed limits for most of the subcategory/pollutant combinations. While EPA made significant changes based on the comments, EPA did not finalize a HBCA or health-based emissions limitations (HBELs) and is maintaining, but clarifying, the energy assessment requirement. EPA determined that the final rule will affect 44 classes of small entities, and 147 small entities in total. EPA compared the estimated costs to the sales for these entities and found the costs to be an average of 4-percent sales, with a maximum of 59.8 percent of sales and a minimum of less than 0.01 percent of sales. EPA is preparing a Small Entity Compliance Guide to help small entities comply with the final rule.

(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 the final rule contains a federal mandate that may result in expenditure of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA incorporated the cost-benefit analysis discussed above as part of the Unfunded Mandates Reform Act analysis. EPA determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments.

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

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

EPA published a notice of proposed rulemaking in the *Federal Register* on June 4, 2010. 75 Fed. Reg. 32,006. EPA received comments and responded to those comments in the final rule. 76 Fed. Reg. 15,608.

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

The final rule contains information collection requirements which EPA has submitted to the Office of Management and Budget (OMB) for approval. The information requirements are based on notification, recordkeeping, and requirements in the National Emissions Standards for Hazardous Air Pollutants (NESHAP) General Provisions, which are mandatory for all operators subject to national emission standards. The final rule requires maintenance inspections of the control devices, but does not require any notifications or reports beyond those required by the General Provisions, aside from the notification of alternative fuel use for those units that are in Gas 1 subcategory but burn liquid fuels for periodic testing, or during periods of gas curtailment or gas supply emergencies. Also, when a malfunction occurs, sources must report them according to applicable reporting requirements.

EPA estimates that the annual monitoring, reporting, and recordkeeping for this collection, averaged over the first 3 years after the effective date of the standards, is \$95.9 million. This includes 280,459 labor hours per year at a total labor cost of \$26.5 million per year, and total non-labor capital costs of \$69.3 million per year. This estimate includes initial and annual performance tests, conducting and documenting an energy assessment, conducting fuel specifications for Gas 1 units, repeat testing under worst-case conditions for solid fuel units, conducting and documenting a tune-up, semiannual excess emissions reports, maintenance inspections, developing a monitoring plan, notifications, and recordkeeping. The total burden for the federal government, averaged over the first 3 years after the effective date of the standard, is estimated to be 97,563 hours per year at a total labor cost of \$5.2 million per year.

Statutory authorization for the rule

The final rule is authorized by section 112 of the Clean Air Act.

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

The final rule was determined to be economically significant under the Order. EPA submitted the rule to OMB for review.

Executive Order No. 13,132 (Federalism)

EPA determined that the final rule does not have federalism implications. The final rule 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 among the various levels of government.