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United States Government Accountability Office
Washington, DC 20548

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August 11, 2008

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

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Standards of Performance for Petroleum Refineries*

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 “Standards of Performance for Petroleum Refineries” (RIN: 2060-AN72). We received the rule, which EPA categorized as non-major under the Congressional Review Act, on May 1, 2008. It was published in the *Federal Register* as a final rule on June 24, 2008. 73 Fed. Reg. 35,838. On July 28, 2008, EPA stated that the final rule for newly promulgated standards of performance for new, modified, or reconstructed process units (subpart Ja) should have been classified as a major rule under the Congressional Review Act and would be stayed for 60 days in a final rule published in the *Federal Register*. 73 Fed. Reg. 43,626. We received that rule on July 25, 2008. For the purposes of this report, the final rule refers to the substantive rule published on June 24, 2008.

The final rule amends the current Standards of Performance for Petroleum Refineries. The final rule also promulgates separate standards of performance for new, modified, or reconstructed process units at petroleum refineries, including emissions limitations and work practice standards for fluid catalytic cracking units, fluid coking units, delayed coking units, fuel gas combustion devices, and sulfur recovery plants.

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 the 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
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
"STANDARDS OF PERFORMANCE FOR PETROLEUM REFINERIES"
(RIN: 2060-AN72)

(i) Cost-benefit analysis

EPA prepared a cost-benefit analysis for this major rule. EPA estimates that the monetized benefits will range from \$220 million to \$1.9 billion and that the annualized costs will be \$31.1 million.

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

EPA has certified that the 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 has determined that the 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. EPA has also 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 issued a notice of proposed rulemaking on May 14, 2007. 72 Fed. Reg. 27,278. On June 28, 2007, EPA extended the 60-day comment period to August 27, 2007, in response to several requests. 72 Fed. Reg. 35,375. EPA issued a notice of data availability on December 7, 2007, to notify the public that additional information had been added to the docket and extended the public comment period on the proposed rule to January 7, 2008. 72 Fed. Reg. 69,175. EPA received 38 comments during the extended comment period, and 8 comments on the notice of data availability, and EPA responded to all these comments in the final rule. 73 Fed. Reg. 35,838.

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

EPA submitted the information collection requirements in the final standards of performance for petroleum refineries to the Office of Management and Budget (OMB) for approval, and those requirements will not be enforceable until OMB approves them.

Statutory authorization for the rule

The final rule is authorized by section 111(b) of the Clean Air Act. Codified at 42 U.S.C. § 7411(b).

Executive Order No. 12,866

EPA determined that this final rule is an economically significant regulatory action because it will likely have an annual effect on the economy of \$100 million or more. EPA submitted the final rule to OMB for review.

Executive Order No. 13,132 (Federalism)

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, EPA has determined that this final rule does not have federalism implications.