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September 24, 2004

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 W.J. "Billy" Tauzin
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: National Emission Standards for Hazardous Air Pollutants for 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 Industrial, Commercial, and Institutional Boilers and Process Heaters" (RIN: 2060-AG69). We received the rule on April 8, 2004. It was published in the Federal Register as a final rule on September 13, 2004. 69 Fed. Reg. 55218.

The final rule contains national emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers and process heaters. The rule implements section 112(d) of the Clean Air Act by requiring all major sources to meet hazardous air pollutants (HAP) emissions standards reflecting the application of the maximum achievable control technology. The final rule is expected to reduce HAP emissions by 50,600 to 58,000 tons per year.

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: Stephanie Daigle
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
"NATIONAL EMISSION STANDARDS FOR HAZARDOUS
AIR POLLUTANTS FOR INDUSTRIAL, COMMERCIAL, AND
INSTITUTIONAL BOILERS AND PROCESS HEATERS"
(RIN: 2060-AG69)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis regarding the final rule that resulted in an estimated total national cost impact of \$1.79 billion in capital expenditures and \$860 million in total annual costs. EPA estimates the annualized social costs could range from \$863 million to \$746 million, depending on the number of affected facilities demonstrating eligibility for the health-based compliance alternatives. Social costs are different from compliance costs in that social costs take into account the interactions between affected producers and the consumers of affected products in response to the imposition of the compliance costs.

The benefits of the rule are estimated at \$16.3 billion, which figure also includes ancillary reductions in particulate matter and sulfur dioxide. EPA also notes that not all additional health and environmental benefits could be expressed in quantitative or economic value terms.

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

The EPA Administrator has determined 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

The final rule contains a federal mandate that may result in the expenditure of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, EPA has prepared the written analysis required under section 202 of the Act.

(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, EPA promulgated the 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 the rule is mandated by section 307(d)(1)(c) of the Act. 42 U.S.C. 7607(d)(1)(c).

On January 13, 2003, EPA published a Notice of Proposed Rulemaking in the Federal Register. 68 Fed. Reg. 1660. In response, EPA received 218 comments, and they are discussed in the preamble to the final rule.

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

The final rule contains information collections, which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The collections have been submitted to OMB with the required information, including the annual burden. EPA estimates that annual burden (averaged over the first 3 years) to be \$91 million. This includes 1.2 million labor hours per year at a total labor cost of \$67 million per year and total non-labor capital costs of \$24 million per year.

Statutory authorization for the rule

The final rule is promulgated pursuant to the authority found in the Clean Air Act (42 U.S.C. 7401, et seq.), particularly section 112 of the Act (42 U.S.C. 7412).

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 determined that the final rule does not have federalism implications under the order.