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November 7, 2003

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: Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion*

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 "Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion" (RIN: 2060-AK28). We received the rule on October 21, 2003. It was published in the Federal Register as a final rule on October 27, 2003. 68 Fed. Reg. 61248.

The final rule contains EPA's regulations governing the New Source Review Programs mandated by parts C and D of Title I of the Clean Air Act. The rule provides a category of equipment replacement activities that are not subject to Major New Source Review requirements under the routine maintenance, repair, and replacement exclusion.

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, 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
"PREVENTION OF SIGNIFICANT DETERIORATION (PSD)
AND NON-ATTAINMENT NEW SOURCE REVIEW (NSR):
EQUIPMENT REPLACEMENT PROVISION OF THE
ROUTINE MAINTENANCE, REPAIR AND
REPLACEMENT EXCLUSION"
(RIN: 2060-AK28)

(i) Cost-benefit analysis

EPA prepared a Regulatory Impact Analysis for the final rule, which includes a cost-benefit analysis. EPA notes that it is difficult to quantify the costs and benefits because the equipment replacement approach is being made available as an option that sources may exercise at their discretion.

EPA believes that most of the benefits from the final rule will be four types of cost savings: (1) increased efficiency for industrial production, (2) improved flexibility and reaction time, (3) reductions in the number of applicability determinations performed by industry and reviewing authorities and their associated delays, and (4) reductions in the need for construction of new sources.

Regarding the cost impact of the final rule, EPA finds that each of the 14,500 sources of air pollution potentially subject to the final rule will expend 8 additional hours in regulatory-related activities for a total additional cost of \$8.7 million, or about \$600 per source. The 112 reviewing authorities would incur one-time costs of \$15,540 for a total of \$1,740,480. EPA expects its one-time cost to be \$223,776.

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

EPA has concluded that the final rule will not have a significant economic impact on a substantial number of small entities because the rule will decrease the regulatory burden for all 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 does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million 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.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On December 31, 2002, EPA published a Notice of Proposed Rulemaking in the Federal Register. 67 Fed. Reg. 80290. EPA responds to the comments received in the preamble to the final rule.

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

The final rule contains an information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

EPA has submitted the required information to OMB including the estimated burden hours. EPA expects a one-time burden of \$580,000 for the 112 affected reviewing authorities.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action.

Executive Order No. 13132 (Federalism)

EPA states that the final rule does not have federalism implications sufficient to warrant the preparation of a federalism assessment.