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November 7, 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: Revisions to the Definition of Solid Waste*

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 "Revisions to the Definition of Solid Waste" (RIN: 2050-AG31). We received the rule on October 14, 2008. It was published in the *Federal Register* as a final rule on October 30, 2008. 73 Fed. Reg. 64,668.

The final rule revises the definition of solid waste to exclude certain hazardous secondary materials from regulation under the Resource Conservation and Recovery Act. The final rule includes an exclusion for certain hazardous secondary materials legitimately reclaimed under the control of the generator and a conditional exclusion for hazardous materials that are transferred for the purpose of legitimate reclamation. The final rule also codifies the factors to be used in determining whether recycling under the rule is legitimate. Finally, the final rule establishes a non-waste determination process that provides persons with an administrative process for receiving a formal determination that their hazardous secondary materials are not discarded and, therefore, not solid wastes when legitimately reclaimed.

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 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
"REVISIONS TO THE DEFINITION OF SOLID WASTE"
(RIN: 2050-AG31)

(i) Cost-benefit analysis

EPA estimates that the average annual net benefits of the final rule to the national economy to be \$95 million per year. This benefit consists of net cost savings for hazardous secondary materials reclaimed under the control of the generator, exclusion of other off-site transfers and case-by-case non-waste determinations. Future variations in numerical uncertainty factors could result in future annual net benefits ranging from \$19 million to \$333 million in any given future year.

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

Because the action is designed to lower costs for entities subject to the requirement, EPA certifies that this 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 include a federal mandate that may result in expenditures of \$100 million or more for state, local, or tribal governments, in the aggregate, or the private sector 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.

A proposed rule was published in the *Federal Register* on October 28, 2003. 68 Fed. Reg. 61,558. After receiving comments on the proposed rule and performing three recycling studies, EPA published a supplemental proposal in the *Federal Register* on March 26, 2007. 72 Fed. Reg. 14,172. EPA received hundreds of comments on the proposed rule and the supplemental proposed rule. EPA responded to those comments in this final rule. 73 Fed. Reg. 64,668.

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

EPA submitted the information collection requirements (ICR) in the final rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, and these requirements are not enforceable until approved by OMB.

EPA estimates that the aggregate annual burden to respondents over the 3-year period covered by the ICR to be 11,552 hours with a cost of \$1,417,242, which represents an annual reduction in burden to respondents of 52,050 hours, and a cost reduction of \$3,474,035 per year. Affected entities are estimated to have annual operation and maintenance costs of \$739,469 per year, primarily for purchasing audit or other similar type reports.

EPA estimates that its administrative costs will be 1,257 hours per year, representing an annual cost of \$49,891.

Statutory authorization for the rule

This final rule is issued under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, 3010, and 3017 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984. 42 U.S.C. §§ 6912, 6921, 6922, 6923, 6924, 6927, 6930, and 6938.

Executive Order No. 12,866

EPA determined the final rule was a significant regulatory action under the Order and submitted the rule to OMB for review. EPA made changes in response to OMB's recommendations and prepared an analysis of the potential economic costs and benefits associated with the rule.

Executive Order No. 13,132 (Federalism)

The final rule will have substantial direct effects on the states or on the relationship between the national government and the states. There are no state or local government bodies that incur direct compliance costs by this rulemaking, and state and local government implementation expenditures are expected to be less than \$500,000 in any one year. Many states choose to incorporate EPA's regulations by reference; however, EPA does not require them to do so.