



**United States Government Accountability Office
Washington, DC 20548**

B-324396

February 14, 2013

The Honorable Barbara Boxer
Chairman
The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry 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-AR13). We received the rule on January 9, 2013. It was published in the *Federal Register* as a final rule; notice of final action on reconsideration on January 31, 2013. 78 Fed. Reg. 7138.

The final rule and notice of final action on reconsideration was issued by EPA to take final action on reconsideration of certain issues related to the emission standards to control hazardous air pollutants from new and existing industrial, commercial, and institutional boilers at area sources which were issued under section 112 of the Clean Air Act. As part of this action, EPA also amended certain compliance dates for the standard and made technical corrections to the final rule to clarify definitions, references, applicability and compliance issues raised by petitioners and other stakeholders affected by the rule.

The rule lifted the May 18, 2011 (76 Fed. Reg. 28,661), delay of the effective date revising subpart DDDDD at 76 Fed. Reg. 15,451 (March 21, 2011) as of January 31, 2013. The amendments in this rule to 40 C.F.R. part 63, subpart DDDDD have an effective date of April 1, 2013.

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

ENCLOSURE

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-AR13)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis in conjunction with the final rule using the methodology that was discussed in the March 2011 final rule Regulatory Impact Analysis (RIA) and in the preamble to the March 2011 final rule (76 Fed. Reg. 15,651). The market impact results are very similar to the results presented in the March 2011 final rule and the RIA. EPA determined the estimated social costs of the final rule are \$1.4 to \$1.6 billion based on compliance costs associated with the final rule and the predicted change in prices and production in the affected industries. EPA determined that the benefits of the final rule will be related to the reductions in hazardous air pollutants (HAP), particulate matter (PM_{2.5}), and sulfur dioxide (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 2015 associated with the implementation of the final rule to range from \$27 billion to \$67 billion using a 3 percent discount rate, or from \$25 billion to \$61 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 major source rule, which EPA signed on February 21, 2011, and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities. EPA stated that because EPA used the Panel's report and prepared both an initial regulatory flexibility analysis and a final regulatory flexibility analysis in connection with the closely related major source rule, that convening an additional Panel and preparing an additional final regulatory flexibility analysis would be procedurally duplicative and unnecessary given that the issues are within the scope of those considered by the Panel. EPA also stated that this final action would decrease capital and annualized costs on small entities by about 3 percent and 10 percent, respectively, relative to the closely related 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 and the March 21, 2011, final rule 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 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 promulgated national emission standards for this source category on March 21, 2011. 76 Fed. Reg. 15,607. On that same day, EPA also published a notice announcing its intent to reconsider certain provisions of the final rule. Following these actions, EPA received several petitions for reconsideration. After consideration of the petitions received, on December 23, 2011, EPA proposed revisions to certain provisions of the March 21, 2011, final rule, and requested public comment on several provisions of the final rule. 76 Fed. Reg. 80,597. EPA took final action on the proposed reconsideration in the final rule. 78 Fed. Reg. 7138.

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

The final rule contains information collection requirements subject to the Paperwork Reduction Act. EPA has updated the supporting statement to reflect the final inventory and burden estimates associated with this action since some of the monitoring, recordkeeping, and reporting requirements have changed since the March 21, 2011, final rule. 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. The recordkeeping requirements require only the specific information needed to determine compliance.

EPA has revised its 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 \$95.3 million. This includes 323,130 labor hours per year at a total labor cost of \$30.6 million per year, and total non-labor capital costs of \$64.7 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 100,608 hours per year at a total labor cost of \$5.3 million per year. These revised estimates have been sent to the Office of Management and Budget (OMB) for review and approval.

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.