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United States Government Accountability Office  
Washington, DC 20548

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B-321735

April 1, 2011

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

The Honorable Fred Upton  
Chairman  
The Honorable Henry A. Waxman  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Environmental Protection Agency: Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units*

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 New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units” (RIN: 2060-AQ12). We received the rule on February 28, 2011. It was published in the *Federal Register* as a final rule on March 21, 2011. 76 Fed. Reg. 15,704.

The final rule promulgates EPA’s final response to the 2001 voluntary remand of the December 1, 2000, new source performance standards and emission guidelines for commercial and industrial solid waste incineration units and the vacatur and remand of several definitions by the District of Columbia Circuit Court of Appeals in 2007. In addition, the final rule includes the 5-year technology review of the new source performance standards and emission guidelines required under section 129 of the Clean Air Act. The final rule also promulgates other amendments EPA believes necessary to address air emissions from commercial and solid waste incineration units. The final rule is effective on May 20, 2011.

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

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 NEW STATIONARY SOURCES  
AND EMISSION GUIDELINES FOR EXISTING SOURCES:  
COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS"  
(RIN: 2060-AO12)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis in conjunction with the final rule. EPA estimated compliance costs for all existing units to add the necessary controls and monitoring equipment, and to implement the inspections, recordkeeping, and reporting requirements to comply with the commercial and industrial solid waste incineration (CISWI) standards, and the costs of alternative disposal for the subcategories that may have alternative options to burning waste, specifically for the incinerators and the small, remote incinerator that may have an alternative to incineration. EPA estimated overall total capital investment of \$652 million with an associated total annual cost of \$232 million. EPA estimated compliance costs for new CISWI units coming online in the next 5 years, and estimated an overall total capital investment of \$8.4 million over 5 years with an associated total annual cost of \$2.6 million in 2015. EPA estimated the monetized benefits of the final rule to be \$340 million to \$830 million, using a 3-percent discount rate, or \$310 million to \$750 million, using a 7-percent discount rate. The monetized benefits do not include reducing ecosystem effects, visibility impairment, and other air pollutants, such as reducing 25,000 tons of carbon monoxide, 470 tons of hydrogen chloride, 4.1 tons of lead, 0.95 tons of cadmium, 260 pounds of mercury, and 92 grams of total dioxin/furan each year.

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

EPA 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 determined that the final rule contains a federal mandate that may result in expenditure 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 states that EPA does not believe there will be any disproportionate budgetary effects on any particular areas of the country, state, or local governments, types of communities (e.g., urban, rural), or particular industry segments. 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 published a notice of proposed rulemaking in the *Federal Register* on June 4, 2010. 75 Fed. Reg. 31,844. EPA received comments and responded to those comments in the final rule. 76 Fed. Reg. 15,704.

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

The final rule contains information collection requirements (ICR) which EPA has submitted to the Office of Management and Budget (OMB) for approval. Sources must report malfunctions when they occur according to the applicable reporting requirements. An affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions is available to a source if it can demonstrate that certain criteria and requirements are satisfied. EPA's estimate for the required notification, reports and records, including the root cause analysis, totals \$3,141 and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emission limit, and also to produce and retain the record and reports for submission to EPA. EPA provided this illustrative estimate of the burden because the costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

EPA estimates that the annual average burden associated with recordkeeping and reporting requirements for the emission guidelines (EG) over the first 3 years after promulgation is 14,672 hours per year at a total annual labor cost of \$522,323. The total capital and startup plus the operations and maintenance costs with the EG monitoring requirements, EPA Method 22 at 40 CFR part 60, appendix A-7 testing, initial stack testing, annual stack testing, storage of data and reports and photocopying and postage over the 3-year period of the ICR are estimated to be \$18,592,079 total and \$6,197,360 per year. The annual average burden associated with the new source performance standards over the first 3 years following promulgation of the final rule is estimated to be 858 hours at a total annual labor cost of \$30,527.

Statutory authorization for the rule

The final rule is authorized by sections 111 and 129 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.