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Washington, DC 20548

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B-324395

February 13, 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 Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines*

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 Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines” (RIN: 2060-AQ58). We received the rule on January 18, 2013. It was published in the *Federal Register* as a final rule on January 30, 2013. 78 Fed. Reg. 6674.

The final rule amends the national emission standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines. The final amendments include alternative testing options for certain large spark ignition (SI) (generally natural gas-fueled) stationary reciprocating internal combustion engines (RICE), management practices for a subset of existing spark ignition stationary reciprocating internal combustion engines in sparsely populated areas, and alternative monitoring and compliance options for the same engines in populated areas. EPA is establishing management practices for existing compression ignition (CI) engines on offshore vessels. EPA is also finalizing limits on the hours that stationary emergency engines may be used for emergency demand response and

establishing fuel and reporting requirements for certain emergency engines used for emergency demand response. The final amendments also correct minor technical or editing errors in the current regulations for stationary RICE. This final rule was developed to address certain issues that were raised by various stakeholders through lawsuits, several petitions for reconsideration of the 2010 RICE NESHAP amendments, and other communications.

EPA states that the final rule is effective on April 1, 2013, and the incorporation by reference of certain publications listed in this final rule is approved by the Director of the *Federal Register* as 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

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 RECIPROCATING INTERNAL COMBUSTION ENGINES;  
NEW SOURCE PERFORMANCE STANDARDS FOR  
STATIONARY INTERNAL COMBUSTION ENGINES"  
(RIN: 2060-AQ58)

(i) Cost-benefit analysis

EPA states that the final amendments are expected to reduce the overall cost of the original 2010 RICE NESHAP amendments. EPA estimates that with these final amendments incorporated, the total annual cost of the rule for existing stationary RICE will be \$115 million for SI engines and \$373 million for CI engines (2010 dollars), and total capital costs will be \$103 million for SI engines and \$740 million for CI engines (2010 dollars). EPA includes for comparison the costs that EPA previously estimated for the 2010 amendments to the RICE NESHAP. EPA did not estimate costs associated with the changes to the new source performance standards (NSPS) for stationary CI and SI engines. According to EPA, the changes to the NSPS are minor and are not expected to impact the costs of those rules.

EPA states that emission controls installed to meet the requirements of this final rule will generate benefits by reducing emissions of hazardous air pollutants (HAP) as well as criteria pollutants and their precursors, including CO, NO<sub>x</sub>, and VOC. NO<sub>x</sub> and VOC are precursors to PM<sub>2.5</sub> (particles smaller than 2.5 microns) and ozone. EPA considers the criteria pollutant benefits to be co-benefits for this rule. For this final rule, EPA was only able to quantify the health co-benefits associated with reduced exposure to PM<sub>2.5</sub> from emission reductions of NO<sub>x</sub> and directly emitted PM<sub>2.5</sub>. EPA has not re-estimated the benefits from the proposal for this final rule because the emission reductions have not changed since the reconsideration proposal.

EPA previously estimated that the monetized co-benefits in 2013 of the stationary CI NESHAP would be \$940 million to \$2,300 million (2008 dollars) at a 3 percent discount rate and \$850 million to \$2,100 million (2008 dollars) at a 7 percent discount rate. For stationary SI engines, EPA previously estimated that the monetized co-benefits in 2013 would be \$510 million to \$1,200 million (2009 dollars) at a 3 percent discount rate and \$460 million to \$1,100 million (2009 dollars) at a 7 percent discount rate. The final amendments are expected to reduce the overall emission reductions of the rules, primarily due to the changes to requirements for engines in remote areas. In addition to revising the anticipated emission reductions,

EPA has also updated the methodology used to calculate the co-benefits to be consistent with methods used in more recent rulemakings. EPA estimates the monetized co-benefits of the final amendments of the CI NESHAP in 2013 to be \$770 million to \$1,900 million (2010 dollars) at a 3 percent discount rate and \$690 million to \$1,700 million (2010 dollars) at a 7 percent discount rate. For SI engines, EPA estimates the monetized co-benefits of the final amendments in 2013 to be \$62 million to \$150 million (2010 dollars) at a 3 percent discount rate and \$55 million to \$140 million (2010 dollars) at a 7 percent discount rate. According to EPA, it should be noted that the monetized co-benefits estimates provided above do not include benefits from several important benefit categories, including exposure to HAP, NO<sub>x</sub>, ozone, as well as ecosystem effects and visibility impairment. Although EPA does not have sufficient information or modeling available to provide monetized estimates for these amendments, EPA includes a qualitative assessment of these unquantified benefits in the regulatory impact analyses for these final amendments.

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

After considering the economic impacts of this final rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Although the final reconsideration rule will not have a significant economic impact on a substantial number of small entities, EPA, nonetheless, tried to reduce the impact of this rule on small entities and took special steps to ensure that the burdens imposed were minimal. EPA conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. In addition, EPA is reducing the regulatory requirements for a variety of area sources affected under each of the RICE rules with amendments to the final RICE rules promulgated in 2010.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. §§ 1532-1535

EPA states that the final rule does not 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 is finalizing management practices for certain existing engines located at area sources and is finalizing amendments that will provide owners and operators with alternative and less expensive compliance demonstration methods. As a result of these changes, EPA anticipates a substantial reduction in the cost burden associated with this rule. Thus, EPA notes that this final rule is not subject to the requirements of sections 202 or 205 of UMRA or to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. According to EPA, the changes being finalized in this action by the

agency will mostly affect stationary engine owners and operators and will not affect small governments. EPA believes that these final amendments will lead to a reduction in the cost burden.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On March 3, 2010, EPA issued a final rule establishing standards for emissions of HAP from existing stationary diesel engines located at major and area sources. 75 Fed. Reg. 9648. After promulgation of the 2010 RICE NESHAP amendments, EPA received several petitions for reconsideration, legal challenges, other communications raising issues related to practical implementation and certain factual information that had not been brought to EPA's attention during the rulemaking. EPA has considered this information and the comments submitted in response to the proposed amendments and believes that amendments to the rule to address certain issues are appropriate. Therefore, EPA is finalizing amendments to 40 C.F.R. part 63, subpart ZZZZ, NESHAP for stationary RICE. The current regulation applies to owners and operators of existing and new stationary RICE at major and area sources of HAP emissions. EPA notes that the applicability of the rule remains the same and is not changed by this final rule. EPA is also finalizing amendments to the new source performance standards for stationary engines to conform with certain amendments finalized for the RICE NESHAP. EPA provides a summary of the key amendments to the regulations in the final rule.

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

EPA states that the information collection requirements (ICR) in this final rule for stationary SI RICE have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and notes that the information collection requirements are not enforceable until OMB approves them. According to EPA, OMB has previously approved the information collection requirements contained in the 2010 RICE NESHAP final rulemaking, including those for stationary CI RICE, under the provisions of the PRA and has assigned OMB control number 2060-0548.

EPA explains that beginning in 2016, owners and operators of emergency stationary engines that operate or are contractually obligated to be available for more than 15 hours per year for emergency demand response must document their operation in annual reports to EPA. According to EPA, these reports are necessary to enable EPA or states to identify affected facilities that may not be in compliance with the requirements. EPA notes that the burden of this reporting requirement is not included in the ICR burden estimate because it is after the first 3 years after which sources must begin complying with the rule. EPA believes the reporting burden beginning in 2016 would only be included starting with the first ICR renewal. EPA anticipates that in most cases, the entity that dispatches the engines to

operate, such as the curtailment service provider or utility, will report the information to EPA on behalf of the facility that owns the engine. Thus, EPA states that the burden of the reporting requirement will likely be on the entities that dispatch the engines. The number of entities is uncertain, but EPA estimates that approximately 446 local utilities would engage in the reporting requirement resulting in an estimated burden of 7,136 hours at a cost of \$611,000 per year, beginning in the year 2015. Additionally, EPA believes that summing the totals for the cooperatives and curtailment service providers yields a total of 77,136 labor hours at a cost of \$4.8 million in the first year that reporting is required (2015) and 24,636 labor hours at a cost of \$1.7 million in subsequent years.

#### Statutory authorization for the rule

EPA states that the final rule is authorized by section 112 of the Clean Air Act.

#### Executive Order No. 12,866 (Regulatory Planning and Review)

EPA states that the final rule is an “economically significant regulatory action” because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, EPA submitted this action to OMB for review under Executive Order 12,866 and Executive Order 13,563, and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared a regulatory impact analysis of the potential costs and benefits associated with this action.

#### Executive Order No. 13,132 (Federalism)

EPA states that the final action does not have federalism implications and 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 and responsibilities among the various levels of government. According to EPA, the final action primarily affects private industry and does not impose significant economic costs on state or local governments, and Executive Order 13,132 does not apply to this action. In the spirit of Executive Order 13,132, and consistent with EPA’s policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposed action from state and local officials.