



441 G St. N.W.
Washington, DC 20548

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January 30, 2017

The Honorable John Barrasso
Chairman
The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Greg Walden
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*

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 “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act” (RIN: 2050-AG82). We received the rule on January 9, 2017. It was published in the *Federal Register* as a final rule on January 13, 2017, with an effective date of March 14, 2017. 82 Fed. Reg. 4594.

The final rule is in response to Executive Order 13,650 and amends EPA’s Risk Management Program regulations. The revisions contain several changes to the accident prevention program requirements including an additional analysis of safer technology and alternatives as part of the process hazard analysis for some Program 3 processes, third-party audits and incident investigation root cause analysis for Program 2 and Program 3 processes; enhancements to the emergency preparedness requirements; increased public availability of chemical hazard information; and several other changes to certain regulatory definitions and data elements submitted in risk management plans.

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
“ACCIDENTAL RELEASE PREVENTION REQUIREMENTS:
RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT”
(RIN: 2050-AG82)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) summarized the costs and benefits of the final rule. EPA stated that approximately 12,500 facilities have filed current risk management plans (RMPs) with EPA and are potentially affected by this final rule. The largest annual cost of the final rule is Safer Technology and Alternative Analysis (STAA) costs of \$70 million, followed by the exercise costs of \$24.7 million, coordination costs of \$16 million, and third-party audit costs of \$9.8 million. The remaining provisions impose average annual costs under \$5 million each, including rule familiarization (\$3.9 to \$4.6 million), information sharing (\$3.1 million), incident investigation/root cause analysis (\$1.8 million), notification exercises (\$1.4 million), and public meetings (\$0.4 million). EPA also stated that the rule includes three prevention program provisions—third-party audits, root cause analysis, and STAA—involving information collection and analysis activities that can lead to a wide range of outcomes and therefore costs.

EPA anticipates that implementation of this rule will result in a reduction of the frequency and magnitude of damages from releases. According to EPA, accidents and releases from RMP facilities occur every year, resulting in fires and explosions, property damage, acute and chronic exposures of workers and nearby residents to hazardous materials, and resultant damages to health. EPA stated that it was unable to quantify what specific damage reductions may occur as a result of these revisions; however, EPA provided data on the total damages that occur at RMP facilities each year in the final rule.

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

As required by section 604 of the Regulatory Flexibility Act, EPA prepared a final regulatory flexibility analysis (FRFA) and provided a summary of the analysis in this final rule. EPA stated that the FRFA addresses the issues raised by public comments on the Initial Regulatory Flexibility Analysis for the proposed rulemaking.

(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 this final rule contains a federal mandate under the Unfunded Mandates Reform Act of 1995 (UMRA), 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 provided a brief summary of the written statement required under section 202 of UMRA in the final rule.

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

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

On March 14, 2016, EPA published a proposed rule. 81 Fed. Reg. 13,637. EPA received a total of 61,716 comments on the proposed rulemaking. EPA responded to comments in the final rule.

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

EPA stated that the information collection activities in this final rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act. The information collection request is estimated to have a burden of 1,778,244 burden hours at a cost of \$130,578,842 per year, which includes \$8,285,600 annualized capital or operation and maintenance costs.

Statutory authorization for the rule

EPA stated that it promulgated this rule under 42 U.S.C. §§ 7412 (r), 7601(a)(1), 7661-7661f.

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

EPA determined that this final rule is an economically significant regulatory action, and it was reviewed by the Office of Management and Budget. EPA prepared a Regulatory Impact Analysis of the potential costs and benefits associated with the final rule.

Executive Order No. 13,132 (Federalism)

EPA stated that this final rule does not have federalism implications. However, EPA believes that this final rule may be of significant interest to local governments. EPA sought feedback through the July 31, 2014, Request for Information and a public hearing on March 29, 2016. 79 Fed. Reg. 44,604. EPA also hosted a conference call with governmental entities on May 4, 2016.