



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

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July 30, 2015

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

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

*Subject: Environmental Protection Agency: Revising Underground Storage Tank Regulations—
Revisions to Existing Requirements and New Requirements for Secondary
Containment and Operator Training*

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 “Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training” (RIN: 2050-AG46). We received the rule on July 1, 2015. It was published in the *Federal Register* as a final rule on July 15, 2015. 80 Fed. Reg. 41,566.

The final rule makes certain revisions to the 1988 underground storage tank (UST) regulation and to the 1988 state program approval (SPA) regulation. According to EPA, these changes establish federal requirements that are similar to key portions of the Energy Policy Act of 2005; they also update the 1988 UST and SPA regulations. Changes to the regulations include: adding secondary containment requirements for new and replaced tanks and piping, adding operator training requirements, adding periodic operation and maintenance requirements for UST systems, addressing UST systems deferred in the 1988 UST regulation, adding new release prevention and detection technologies, updating codes of practice, making editorial corrections and technical amendments, and updating state program approval requirements to incorporate these new changes. EPA states these changes will protect human health and the environment by reducing the number of releases to the environment and quickly detecting releases, if they occur.

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
“REVISING UNDERGROUND STORAGE TANK REGULATIONS—
REVISIONS TO EXISTING REQUIREMENTS AND
NEW REQUIREMENTS FOR SECONDARY CONTAINMENT
AND OPERATOR TRAINING”
(RIN: 2050-AG46)

(i) Cost-benefit analysis

EPA prepared an analysis of the potential incremental costs and benefits associated with the final Underground Storage Tank (UST) regulation. This analysis is contained in the regulatory impact analysis document titled Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Revisions to EPA’s Underground Storage Tank Regulations, which is available in EPA’s docket for this action (Docket ID No. EPA–HQ–UST–2011–0301). The Regulatory Impact Analysis (RIA) estimated regulatory implementation and compliance costs, as well as benefits for the three regulatory options described in the final rule. In the RIA, EPA estimated regulatory compliance costs on an annualized basis for the three options: \$160 million (Selected Option), \$290 million (Option 1), and \$70 million (Option 2). Separately, the analysis assessed the potential benefits of the final UST rule. As EPA discussed in the RIA, a substantial portion of the beneficial impacts associated with the final UST rule are avoided cleanup costs as a result of preventing releases and reducing the severity of releases. This action is expected to have annual cost savings related to avoided costs of \$310 million (range: \$120–\$530 million) per year under the Selected Option, \$450 million (range: \$210–\$670 million) per year under Option 1, and \$230 million (range: \$45–\$420 million) per year under Option 2. Due to data and resource constraints, EPA stated that it was unable to quantify some of the final UST regulation’s benefits, including avoidance of human health risks, ecological benefits, and mitigation of acute exposure events and large-scale releases, such as those from airport hydrant systems and field-constructed tanks. EPA was also unable to place a monetary value on the groundwater protected by the final UST regulation, but estimated that this final UST regulation could potentially protect 50 billion to 240 billion gallons of groundwater each year. EPA included a table in the rule of the Costs and Benefits of the UST regulation.

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

EPA certified that this action will not have a significant economic impact on a substantial number of small entities. EPA stated that the small entities directly regulated by this final rule are small businesses and small governmental jurisdictions. EPA determined that less than 1 percent of potentially affected small firms in the retail motor fuel sector will experience an impact over 1 percent of revenues, but less than 3 percent of revenues. EPA further determined that no small firms have impacts above 3 percent of revenues. In addition, EPA estimated that no small governmental jurisdictions will be impacted at 1 percent or 3 percent of revenues. According to EPA, the certification is based on the small entities analysis contained in the RIA for this final rule. Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA stated that it sought to reduce the impact of this rule

on small entities. Specifically, EPA stated that it conducted extensive outreach to determine how to change the 1988 UST regulation. EPA stated that it worked with representatives of owners and operators and reached out specifically to small businesses. In addition, EPA stated that it limited changes that would have required major retrofits to UST systems, since this would place a high financial burden on small businesses. Finally, EPA said that it provided numerous options for compliance in order to provide as much flexibility as possible for small entities. EPA stated that it also aligned compliance dates to facilitate owner and operator compliance.

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

EPA states that the final rule contains 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. According to EPA, as estimated in the RIA, on an annualized basis, the total estimated regulatory compliance costs for the three options in the final rule are \$160 million (Selected Option), \$290 million (Option 1), and \$70 million (Option 2). Of this amount, annualized costs to state and local governments total \$6.8 million under the Selected Option, \$14 million under Option 1, and \$3.6 million under Option 2. These costs consist of estimated regulatory compliance costs for state and local governments that currently own or operate UST systems and annualized costs of \$120,000 for states to implement the final UST regulation. EPA estimated total annualized costs of \$0.67 million under the Selected Option to owners and operators of tribally-owned UST systems. The estimated annualized cost to the private sector is approximately \$130 million under the Selected Option, \$270 million under Option 1, and \$67 million under Option 2. EPA states that, while this final UST regulation may result in expenditures of \$100 million or more for the private sector, thereby triggering section 202 of the UMRA, the final rule is not subject to the requirements of section 204 of UMRA because EPA does not think state, local, and tribal governments will incur aggregate costs of over \$100 million per year.

EPA stated that consistent with section 205, it identified and considered a reasonable number of regulatory alternatives. The final rule identifies the regulatory options EPA considered. The RIA estimates the annual cost across the three considered options may range between \$70 million and \$290 million. Section 205 of UMRA requires federal agencies to select the least costly or most cost-effective regulatory alternative unless EPA published with the final rule, an explanation of why such alternative was not adopted. EPA states that it considered and evaluated variations of a subset of the regulatory requirements using two alternative options (Options 1 and 2). Despite Option 2's lower costs, EPA stated that it chose the Selected Option because it provides for greater protection of human health and the environment and better addresses stakeholder concerns. According to EPA, this rule is not subject to the requirements of section 203 of UMRA because it 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.

On November 18, 2011, EPA published a proposed rule. 76 Fed. Reg. 71,708. EPA stated that in order to ensure all stakeholders had an opportunity to comment, a 5-month public comment period was provided on the proposed UST and SPA regulations. EPA stated that it conducted extensive stakeholder outreach before publishing the rule by holding more than 100 meetings

with stakeholders during the 2 years prior to issuing the 2011 proposed UST and SPA regulations. EPA also said that to further understand comments and concerns, it continued to meet with all interested stakeholders during and after the 5-month public comment period. EPA stated that it reviewed all the comments and additional information received and EPA responded to the comments in the final rule.

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

EPA stated that the information collection requirements (ICR) in the rule will be submitted for approval to the Office of Management and Budget (OMB) under PRA. EPA noted that the information collection requirements are not enforceable until OMB approves them. The proposed rule ICR was submitted to OMB on November 18, 2011, under OMB number 2050-0068, ICR number 1360.11. On January 30, 2012, OMB released a Notice of Action of comment filed on the proposed rule. They also issued this comment: "Terms of the previous clearance remain in effect. OMB is withholding approval at this time. Prior to publication of the final rule, the agency should provide a summary of any comments related to the information collection and their response, including any changes made to the ICR as a result of comments. In addition, the agency must enter the correct burden estimates. This action has no effect on any current approvals." EPA stated that the final rule ICR will be submitted to OMB under a new ICR OMB control number, and that the final rule contains mandatory information collection requirements.

According to EPA, the labor burden and associated costs for these requirements are estimated in the ICR supporting statement for this final action. The supporting statement identifies and estimates the burden for each of the changes to the regulation that include recordkeeping or reporting requirements. Changes include: adding secondary containment requirements for new and replaced tanks and piping; adding operator training requirements; adding periodic operation and maintenance requirements for UST systems; regulating certain UST systems deferred in the 1988 UST regulation; adding new release prevention and detection technologies; and updating state program approval requirements to incorporate these new changes. Based on the same data and cost calculations applied in the RIA for this action, but using the burden estimations for ICRs, the ICR supporting statement estimates an average annual labor hour burden of 344,000 hours and \$12 million for the final UST regulation. One-time capital and hourly costs were included in the estimates based on a 3-year annualization period. EPA states that burden is defined at 5 C.F.R. 1320.3(b). The total universe of respondents for this ICR is comprised of 211,154 facilities and 56 states and territories. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 C.F.R. part 9. EPA notes that when this ICR is approved by OMB, it will publish a technical amendment to 40 C.F.R. part 9 in the *Federal Register* to display the OMB control number for the approved information collection requirements contained in the final rule.

Statutory authorization for the rule

EPA revised these regulations under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9010, and 9012 of the Solid Waste Disposal Act (SWDA) of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), 42 U.S.C. §§ 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(i), and 6991(k).

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

Under section 3(f)(1) of Executive Order 12,866, this action 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. EPA states that any changes made in response to OMB recommendations are documented in the docket for this action.

Executive Order No. 13,132 (Federalism)

According to EPA, the final rule does not have federalism implications. It will not have substantial direct effects on states, the relationship between the federal government and states, or the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13,132. EPA states that the total costs to all affected states and local governments (including direct compliance costs, notification costs, and state program costs) are approximately \$9 million. This is not considered by EPA to be a substantial compliance cost under federalism requirements. Thus, EPA concluded that Executive Order 13,132 does not apply to this action. However, EPA states that, in the spirit of Executive Order 13,132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposed action from state and local officials.

Executive Order No. 13,175 (Consultation and Coordination with Indian Tribal Governments)

EPA has concluded that this final rule will have tribal implications to the extent that tribally-owned entities with UST systems in Indian country will be affected. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. EPA estimated total annualized costs for tribally-owned UST systems in Indian country to be \$0.67 million. EPA explained that extensive consultation with tribal officials occurred. As required by section 7(a), EPA's Tribal Consultation Official certified that the requirements of Executive Order 13,175 have been met in a meaningful and timely manner. EPA included a copy of the certification in the docket for this action.

Executive Order No. 13,045 (Protection of Children from Environmental Health Risks and Safety Risks)

According to EPA, this final rule is not subject to Executive Order 13,045 because EPA does not think the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

Executive Order 13,211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use)

According to EPA, this final rule is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

National Technology Transfer and Advancement Act (NTTAA)

EPA states that NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards. This rule uses technical standards. EPA states that it has decided to use voluntary consensus standards,

called codes of practice. The codes of practice meet the objectives of this rule by establishing criteria for the design, construction, and maintenance, of underground storage tanks.

Executive Order 12,898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)

EPA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.