



United States  
General Accounting Office  
Washington, D.C. 20548

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Office of the General Counsel

B-272247

July 5, 1996

The Honorable John H. Chafee  
Chairman  
The Honorable Max Baucus  
Ranking Minority Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Accidental Release Prevention Requirements: Risk Management  
Programs Under Clean Air Act Section 112(r)(7)

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 Clean Air Act Section 112(r)(7)" (FRL #5516-5, RIN: 2050-AD26). We received the rule on June 7, 1996. It was published in the Federal Register as a final rule on June 20, 1996. 61 Fed. Reg. 31668.

This rule implements section 112(r) of the Clean Air Act Amendments of 1990, which mandates that EPA promulgate regulations and develop guidance to prevent accidental releases to the air from stationary sources and mitigate the consequences of such releases by focusing prevention measures on chemicals that pose the greatest risk to the public and the environment.

Enclosed is our assessment of EPA's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that EPA complied with the applicable requirements.

If you have any questions about this report, please contact Kathleen E. Wannisky, Associate General Counsel for Operations, at (202) 512-5207. The official responsible for GAO evaluation work relating to EPA is Peter F. Guerrero, Director for Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Robert P. Murphy  
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ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE ENVIRONMENTAL PROTECTION AGENCY (EPA)  
ENTITLED  
"ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT  
PROGRAMS UNDER CLEAN AIR ACT SECTION 112(r)(7)"  
(RIN: 2050-AD26)

(i) Cost-benefit analysis

Because EPA determined that the rule was an "economically significant regulatory action" under terms of Executive Order 12866, it prepared an economic impact analysis in support of the rule on risk management program regulations. It submitted that analysis to the General Accounting Office on June 7, 1996, along with a copy of its final rule. The economic impact analysis describes the regulatory options EPA considered for revising its earlier proposed risk management requirements and estimates the costs and benefits attributable to these options.

The chart below, extracted from the analysis, shows that, with the exception of the first year, EPA believes that the cost of the benefits associated with the implementation of the rule's requirements greatly exceed the costs of implementation of the rule.

ANNUALIZED NET COSTS AND BENEFITS OF THE FINAL RULE

	INITIAL	COMPLIANCE	YEARS	SUBSE- QUENT YRS. (4-30)
	1	2	3	
NET COSTS	\$144 million	\$92 million	\$73 million	\$75 million
BENEFITS	\$62 million	\$124 million	\$187 million	\$174 million

In addition to the estimated benefits of reduced damages from releases of toxic substances, EPA's analysis also highlights what the agency believes to be additional qualitative benefits including those resulting from efficiency gains, increased technology transfer, indirect cost savings, increased goodwill, and increased public awareness.

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

Section 603: Initial regulatory flexibility analyses

The Regulatory Flexibility Act requires federal agencies to evaluate the effects of a proposed rule on small entities. EPA prepared an initial regulatory flexibility analysis in compliance with section 603 of the Act; it published a summary of that analysis in the preamble to the proposed rule in the Federal Register on October 20, 1993. 58 Fed. Reg. 54212. The analysis concluded that the economic burden for initial compliance would be minimal for about 90 percent of the small businesses affected. For the remaining 10 percent, however, the analysis stated that the program would impose a significant adverse effect in the first year.

Based on the information presented during public hearings and in comments received on the proposed rule, EPA published a supplemental notice of proposed rulemaking in the Federal Register on March 13, 1995. 60 Fed. Reg. 13526. The agency included in the preamble to the revised proposed rule a summary of its updated regulatory flexibility analysis. The analysis concluded that the rule as proposed in 1993 would have had severe adverse effects on small businesses. The revised analysis evaluates three alternatives to the initially proposed rule and assesses the burdens and impacts of each. According to the EPA's discussion, the streamlined requirements of the revised proposed rule drastically reduce the burden on both small businesses and small communities.

Section 604: Final regulatory flexibility analysis

EPA published a summary of its final regulatory flexibility analyses as required by section 604 of the Act in the Federal Register on June 20, 1996. 61 Fed. Reg. 31715. EPA estimated that the total number of small entities affected by the rule was 12,500 or 19 percent of the affected universe. No detailed analysis of the impact on small entities was performed because of the relatively low cost of implementation estimated by EPA (for most manufacturers substantially less than 1 percent of sales the first year and considerably less in subsequent years; for non-manufacturers less than \$1,000 for initial compliance).

According to EPA's analysis, a number of decisions adopted in the final rule (specifically, the adoption of tiers ("programs"), the reduced requirements for the risk management plan and the development of guidance for offsite consequence analysis) have significantly reduced the burden on small entities. EPA considered comments on both the initial and the proposed rule in making these decisions.

All analyses prepared in accordance with this Act were submitted to the Chief Counsel, Small Business Administration.

## Section 607: Preparation of analysis

EPA's analyses use both quantifiable and general descriptions of the effects of the rule and alternatives on small entities.

## Section 609: Participation by small entities

EPA included small entities (from both government and business) in focus groups, public hearings, seminars, and meetings to develop this rule.

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

EPA has determined that this rule contains a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, or the private sector in only its first year. In compliance with section 202 of the Unfunded Mandates Reform Act, EPA prepared a written statement, including a cost benefit analysis, assessing the impact of the rule, which it published with both the proposed and the final rule. As discussed previously, EPA considered the future compliance costs in assessing the impact of the rule.

Consistent with the intergovernmental provisions of sections 203 and 204 of the Act, and Executive Order 12875 "Enhancing the Intergovernmental Partnership," EPA involved state, local, and business representatives in focus groups, public hearings, seminars, and meetings to develop the rule.

Section 205 of the Act requires agencies to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The preamble to the final rule indicates that EPA evaluated three different methodologies for implementation. It ultimately chose what it believed to be the least costly and least burdensome alternative.

### (iv) Other relevant information or requirements under Acts and Executive orders

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

This rule was promulgated through the general notice of proposed rulemaking procedures of the Act, 5 U.S.C. § 553. EPA afforded interested persons several opportunities to comment. Following publication of the proposed rule (58 Fed. Reg. 54190), EPA held four public hearings and received approximately 770 written comments. Because of these comments, EPA issued a supplemental notice of proposed rulemaking on March 13, 1995 (60 FR 13526) for comment on:

approaches for setting different requirements for sources that pose different levels of hazard (tiering); worst-case releases and other hazard assessment issues; accident information reporting; public participation; inherently safer approaches; and implementation and integration of section 112(r) with state programs, particularly state air permitting programs. EPA held a public hearing on March 31, 1995, in Washington, DC, and received more than 283 written comments. In total, commenters represented 92 chemical manufacturers, 81 other chemical users, 111 petroleum industry companies, 174 industry trade associations, 40 other trade associations, 58 agricultural supply retailers, 102 propane retailers, 132 explosives users, 29 water treatment facilities, 26 utilities, 66 state agencies, 63 local governments, 8 other federal agencies, 52 academics and consultants, 61 environmental groups, 6 labor unions, and 31 private citizens. This rule reflects EPA's consideration of all comments; major issues raised by commenters and EPA's response are briefly discussed in the preamble. A summary of all comments submitted and EPA's response to them is available at the agency.

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

The rule imposes information collection requirements in the registration process, in the preparation and submission of the risk management plans, and in the maintenance of on-site documentation. EPA describes in the preamble to the rule the reasons for the collection of information, the type of information and an estimate of the burden imposed on the source. Both initial and supplemental proposed rule publications invited comments on the information collection requirements imposed by the rule. 58 Fed. Reg. 53212. 60 Fed. Reg. 13543.

Section 3506(c) of the Act requires each agency to establish an independent process to review each proposed collection of information before submitting the proposal to OMB for review. EPA's Office of Program Planning and Evaluation conducted such a review. EPA subsequently sent the information collection requirements to the Office of Management and Budget for approval under the Act. 44 U.S.C. §§ 3507(a)(2) and (3). EPA's discussion of its compliance with the Paperwork Reduction Act was omitted from the final rule, including the agency's response to comments by OIRA required to be discussed in the final rule by 44 U.S.C. § 3507(d)(2). Consequently, there is no evidence in EPA's filing of OIRA's comments on, approval or disapproval of, the agency's information collection requirements. EPA did, however, reduce the potential burden of required information collection in drafting the final rule. See discussion below.

EPA appears to meet the OMB requirement (5 C.F.R. § 1320.8(a)(5)) that agencies evaluate the use of automated, electronic or other technological collection forms by allowing sources to register and file risk management plans electronically, thus avoiding what could have been a huge paperwork burden.

## Executive Order No. 12866

Based on its economic impact, the rule was determined to be an "economically significant regulatory action" within the meaning of Executive Order 12866. EPA submitted both the proposed rule and the final rule to the Office of Information and Regulatory Affairs (OIRA) for review. According to EPA, OIRA raised some concerns about the scope of information collection requirements initially proposed by EPA. EPA addressed OIRA's concerns by lessening the information collection requirements for risk management plans in its final rule. In the Federal Register notice, EPA described lessening risk management plan information requirements as follows:

". . . EPA has limited the requirements for information to that which can be reported as data elements. In contrast, the rule as proposed would have required sources to document for each process all major hazards, the consequences of each of these hazards, the risk reduction steps taken to address each hazard, and the consequences of each risk reduction step. The result would have been, for large, complex sources, documents of a 1,000 pages or more."

## Statutory authorization for the rule

This rule is promulgated under sections 112(a), 301(a)(1), title V of the Clean Air Act as amended (42 U.S.C. § § 7412(r), 7601(a)(i), 7661-7661f). The intent of section 112(r) is to prevent accidental releases to the air and mitigate the consequences of such releases by focusing prevention measures on chemicals that pose the greatest risk to the public and the environment. Section 112(r)(3) mandates that EPA promulgate a list of regulated substances, with threshold quantities; this list defines the stationary sources that will be subject to accident prevention regulations mandated by section 112(r)(7). EPA promulgated its list of substances on January 31, 1994 (59 Fed. Reg. 4478).

EPA did not identify any other statute or executive order imposing procedural requirements relevant to this rule.

## Supplementary information

The rule is not covered in the judicial review provisions recently added to the Regulatory Flexibility Act by the Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104-121, Title II, March 29, 1996) because it was published as a final rule before the effective date of those provisions. It is, however, reviewable under

the Clean Air Act. See 42 U.S.C. § 7607(b)(1). Under that provision, judicial review of the requirements contained in this rule is available only by petition for review in the U.S. District of Appeals for the District of Columbia Circuit within 60 days of publication of this final rule.