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November 7, 2023

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Cathy McMorris Rodgers
Chair
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020*

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 “Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020” (FRL-8831-02-OAR). We received the rule on October 12, 2023. It was published in the *Federal Register* as a final rule on October 24, 2023. 88 Fed. Reg. 73098. The effective date is December 26, 2023.

According to EPA, the final rule restricts the use of hydrofluorocarbons in specific sectors or subsectors in which they are used; establishes a process for submitting technology transitions petitions; establishes recordkeeping and reporting requirements; and addresses certain other elements related to the effective implementation of the American Innovation and Manufacturing Act, Pub. L. No. 116-260, div. S, § 103 (Dec. 27, 2020). According to EPA, these restrictions on the use of hydrofluorocarbons address petitions granted on October 7, 2021, and September 19, 2022.

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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
“PHASEDOWN OF HYDROFLUOROCARBONS:
RESTRICTIONS ON THE USE OF CERTAIN HYDROFLUOROCARBONS
UNDER THE AMERICAN INNOVATION AND MANUFACTURING ACT OF 2020”
(FRL-8831-02-OAR)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) estimated the costs of the final rule. EPA estimated in the base case estimates that the total annual abatement costs are approximately \$0.21 billion in 2025 and -\$1.54 billion in 2050, while the incremental annual abatement costs are \$0.07 billion in 2025 and -\$0.63 billion in 2050. EPA further estimated the recordkeeping, reporting, and labeling costs are approximately \$6.6 million in 2025 and \$6.3 million in 2026 and beyond. EPA stated the base case estimates of total costs inclusive of abatement costs and recordkeeping, reporting, and labeling costs are approximately \$0.21 billion in 2025 and -\$1.5 billion in 2050. EPA additionally estimated the base case incremental compliance costs are \$0.07 billion in 2025 and -\$0.6 billion in 2050. EPA stated the high additionality case total costs inclusive of abatement costs and recordkeeping, reporting, and labeling costs are approximately \$0.67 billion in 2025 and -\$1.46 billion in 2050. EPA finally estimated the high additionality case incremental compliance costs are \$0.53 billion in 2025 and -\$0.55 billion in 2050.

EPA also estimated the benefits of the final rule. EPA stated the estimated base case monetized incremental climate benefits from implementation of the final rule are approximately -\$3.7 billion in 2025. For 2050, EPA stated the estimated base case monetized annual incremental climate benefits from implementation of the final rule are approximately \$3.8 billion. EPA additionally stated the estimated high additionality case monetized annual incremental climate benefits from implementation of the rule are approximately \$0.5 billion in 2025 and \$4.9 billion in 2050.

EPA additionally provided net benefit estimates. EPA stated the annual base case incremental net benefits of the rule in 2025 are approximately -\$3.8 billion. EPA also stated the annual high additionality case incremental net benefits of the rule in 2025 are approximately -\$0.46 billion. EPA provided additional estimates for various years until 2050.

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

EPA certified the final rule would 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 the final rule would impose a mandate on the private sector but that it would not impose a mandate for state, local or tribal governments. EPA stated the cost of the mandate would be \$99 million per year from 2025–2050.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

EPA did not address the Act in the final rule.

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

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

On December 15, 2022, EPA published a proposed rule. 87 Fed. Reg. 76775. EPA received comments on the proposal and responded to them in the final rule.

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

EPA determined the final rule contained information collection requests (ICRs) subject to PRA. EPA stated the ICRs are associated with EPA ICR Number 2742.02. EPA estimated the ICRs to have an annual burden of 19,715 hours the first year and 17,050 each subsequent year. EPA additionally estimated the ICRs would have a cost of \$7,170,856 the first year and \$6,832,015 each year thereafter.

Statutory authorization for the rule

EPA promulgated the final rule pursuant to Public Law 116-260.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA stated the final rule was a significant regulatory action and was submitted to OMB for review.

Executive Order No. 13132 (Federalism)

EPA determined the final rule does not have federalism implications. According to EPA, it 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.