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March 26, 2024

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: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention*

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; Safer Communities by Chemical Accident Prevention” (RIN: 2050-AH22). We received the rule on February 29, 2024. It was published in the *Federal Register* as a final rule on March 11, 2024. 89 Fed. Reg. 17622. The effective date is May 10, 2024.

According to EPA, the final rule amends its Risk Management Program (RMP) regulations. EPA stated the revisions include several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, improvements to the public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. As major and other serious and concerning RMP accidents continue to occur, EPA stated that this final rule will help further protect human health and the environment from chemical hazards through advancement of process safety based on lessons learned. EPA further stated these amendments seek to improve chemical process safety; assist in planning, preparedness, and response to RMP-reportable accidents; and improve public awareness of chemical hazards at regulated sources.

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.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

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
“ACCIDENTAL RELEASE PREVENTION REQUIREMENTS:
RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT;
SAFER COMMUNITIES BY CHEMICAL ACCIDENT PREVENTION”
(RIN: 2050-AH22)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) estimated the final rule would lead to annualized costs of \$256.9 million at a three percent discount rate and \$296.9 million at a seven percent discount rate over a 10-year period.

EPA stated it anticipates that promulgation and implementation of the final rule will reduce the risk of accidents and the severity of the impacts when they occur. Specifically, EPA expects the final rule provisions to result in a reduced frequency and magnitude of damages from releases, including damages that are quantified for the baseline period such as fatalities, injuries, property damage, hospitalizations, medical treatment, sheltering in place, and evacuations.

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

EPA certified the final rule will 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 concluded 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. EPA stated that it provided a written summary as required by the Act.

(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 or in its submission to us.

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

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

On August 31, 2022, EPA published a proposed rule. 87 Fed. Reg. 53556. EPA held a virtual hearing from September 26–28, 2022. EPA received comments on the proposed rule and addressed them in the final rule.

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

EPA concluded the final rule contains information collection requirements (ICRs) subject to PRA. EPA estimated the ICRs will have a total burden of 1,190,991 hours (per year) and a total cost of \$126,796,471 (per year). EPA stated OMB has not yet given the ICR a control number.

Statutory authorization for the rule

EPA promulgated the final rule pursuant to sections 7412(r), 7601(a)(1), and 7661–7661f of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA determined the final rule is a significant regulatory action and submitted the rule to OMB for review.

Executive Order No. 13132 (Federalism)

EPA concluded the final rule does not have federalism implications. EPA stated 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.