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May 21, 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: Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances*

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 “Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances” (RIN: 2050-AH09). We received the rule on April 22, 2024. It was published in the *Federal Register* as a final rule on May 8, 2024. 89 Fed. Reg. 39124. The effective date of the rule is July 8, 2024.

According to EPA, this final rule designates perfluorooctanoic acid and perfluorooctanesulfonic acid, including their salts and structural isomers, as hazardous substances. EPA states it reached this decision after evaluating scientific and technical information and conducting a totality of the circumstances analysis.

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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

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
“DESIGNATION OF PERFLUOROOCTANOIC ACID (PFOA) AND
PERFLUOROOCTANESULFONIC ACID (PFOS) AS CERCLA HAZARDOUS SUBSTANCES”
(RIN: 2050-AH09)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) conducted an economic analysis of this final rule. This analysis examined direct and indirect costs and benefits. EPA estimated that the notification requirement arising from designating perfluorooctanoic acid and perfluorooctanesulfonic acid as hazardous substances will cost \$2,658 per release, and that the total cost of the requirement is not anticipated to exceed \$1,630,000 per year. Additionally, EPA stated that direct benefits include improved waste management and treatment practices while indirect benefits include various ecological benefits.

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

EPA certified that this 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 determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million or more, adjusted annually for inflation, in any one year.

(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 discuss the Act in this final rule. In its submission to us, EPA stated “N/A” regarding its actions related to the Act.

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

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

On September 6, 2022, EPA published a proposed rule. 87 Fed. Reg. 54415. EPA received approximately 64,000 comments, including mass mail, from various sources including the regulated community, trade associations, and state, tribal, and local agencies. EPA responded to comments in this final rule.

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

EPA determined that this final rule contains information collection requirements under the Act. EPA stated that it submitted the information collection activities in the rule to OMB for approval (information collection request number 2708.02; OMB Control Number 2050-0227). EPA estimated that the maximum total estimated burden per year is 6,889 hours, and the total maximum estimated cost is approximately \$1,630,000 per year, which includes approximately \$585,000 annualized operation and maintenance costs and no capital costs.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to section 9602 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA determined that this final rule is significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

EPA determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.