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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: Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA)*

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) titled “Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA)” (RIN: 2070-AK70). We received the rule on May 1, 2024. It was published in the *Federal Register* as a final rule on May 8, 2024. 89 Fed. Reg. 39254. The effective date of the rule is July 8, 2024.

According to EPA, it is finalizing this final rule to address the unreasonable risk of injury to health presented by methylene chloride under its conditions of use. EPA stated that TSCA requires it to address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so that the chemical no longer presents unreasonable risk. See *generally* Pub. L. No. 94-469, 90 Stat. 2003 (Oct. 11, 1976). EPA also stated that the rule will, among other things, prevent serious illness and death associated with uncontrolled exposures to the chemical by preventing consumer access to the chemical, restricting the industrial and commercial use of the chemical while also allowing for a reasonable transition period where an industrial and commercial use of the chemical is being prohibited, provide a time-limited exemption for a critical or essential use of methylene chloride for which no technically and economically feasible safer alternative is available, and protect workers from the unreasonable risk of methylene chloride while on the job.

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.

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 PROGRAM
TITLED
“METHYLENE CHLORIDE:
REGULATION UNDER THE TOXIC SUBSTANCES CONTROL ACT (TSCA)”
(RIN: 2070-AK70)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) prepared an analysis of the potential costs and benefits associated with this final rule. EPA stated that a more thorough analysis is available in the rulemaking docket for the rule. EPA estimates the non-closure-related costs of the rule to be \$37.0 million annualized over 20 years at a 3 percent discount rate and \$39.5 million annualized over 20 years at a 7 percent discount rate. EPA estimates the monetized benefits of the rule to be \$24.8 to \$25.1 million annualized over 20 years at a 3 percent discount rate and \$19.8 to \$20.0 million annualized over 20 years at a 7 percent discount rate. Lastly, EPA estimates the incremental, non-closure-related costs of the rule to be \$36.4 million at a 2 percent discount annualized over 20 years and the benefits are estimated to be \$27.1 to \$27.5 million annualized over 20 years.

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

EPA prepared a Final Regulatory Flexibility Analysis for this final rule. The analysis included (1) a statement of need and rule objectives; (2) a description of significant issues raised by public comments; (3) a discussion about the Small Business Administration, Office of Advocacy, comments and EPA response; (4) an estimate of the number of small entities to which the final rule applies, and (5) projected reporting, recordkeeping and other compliance requirements of the rule.

(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, updated 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 that the Act was not applicable to the rule.

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

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

On May 3, 2023, EPA issued a proposed rule. 88 Fed. Reg. 28284. EPA stated that it received almost 40,000 public comments. EPA also stated that comments stemmed from mass mailer campaigns organized by non-governmental organizations, industry stakeholders, trade associations, environmental groups, unions, non-governmental health advocacy organizations, academics, state and local governments, and members of the regulated community. EPA stated further that it summarized comments in a separate document, but this final rule summarizes public comments that informed EPA's regulatory approach in the rule.

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

EPA determined that this final rule contains information collection requirements (ICRs) under the Act (OMB Control Number 2070-0229). EPA estimates the total burden hours imposed by the ICRs to be 149,090 hours per year and the total estimated cost to be \$16,563,299 per year.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to section 2605 of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

EPA determined that this action has federalism implications because regulation under Toxic Substances Control Act section 6(a) may preempt state law. *See generally* 15 U.S.C. § 2605. EPA stated that it consulted with state and local officials, which included a consultation meeting and a background presentation. EPA also stated that it invited the national organizations representing state and local elected officials to these meetings. EPA stated further that it provided an opportunity for these organizations to provide follow-up comments in writing but did not receive any such comments.