



441 G St. N.W.
Washington, DC 20548

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April 12, 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: Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use 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) entitled “Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA)” (RIN: 2070-AK86). We received the rule on March 26, 2024. It was published in the *Federal Register* as a final rule on March 28, 2024. 89 Fed. Reg. 21970. The effective date is May 28, 2024.

The final rule, according to EPA, is issued under the Toxic Substances Control Act, Pub. L. No. 94-469, 90 Stat. 2003 (Oct. 11, 1976), and addresses, to the extent necessary, the unreasonable risk of injury to health presented by chrysotile asbestos based on the risks posed by certain conditions of use. EPA explained that the injuries to human health include mesothelioma and lung, ovarian, and laryngeal cancers resulting from chronic inhalation exposure to chrysotile asbestos.

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
“ASBESTOS PART 1; CHRYSOTILE ASBESTOS; REGULATION OF CERTAIN CONDITIONS
OF USE UNDER THE TOXIC SUBSTANCES CONTROL ACT (TSCA)”
(RIN: 2070-AK86)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) prepared an economic analysis of the potential incremental impacts associated with this final rule. Regarding costs, EPA stated that three firms own a total of eight chlor-alkali facilities in the United States that still use asbestos diaphragms to produce chlorine and sodium hydroxide. According to EPA, converting the facilities using asbestos diaphragm cells to non-asbestos technologies is predicted to require an investment of approximately \$2.8 billion to \$3.4 billion across all eight facilities. The incremental net effect of the rule, according to EPA, on the chlor-alkali industry over a 35-year period using a three percent discount rate is estimated to range from an annualized cost of \$7 million per year to an annualized savings of \$1 million per year, depending on whether the higher grade of caustic soda produced by membrane cells continues to command a premium price. EPA stated that, using a seven percent discount rate, the incremental annualized net effect is a cost ranging from \$34 million to \$43 million per year, again depending on whether there are revenue gains from the caustic soda production. Further, EPA noted that the rule is estimated to result in total annualized costs for aftermarket automotive brakes of approximately \$300,000 per year using a three percent discount rate and \$200,000 per year using a seven percent discount rate.

Regarding benefits, EPA stated it quantified the benefits from avoided cases of lung cancer, mesothelioma, ovarian cancer, and laryngeal cancer due to reduced asbestos exposures to workers, occupational non-users, and do-it-yourselfers related to the rule's requirements for chlor-alkali diaphragms, aftermarket automotive brakes, and sheet gaskets used for titanium dioxide production. According to EPA, the combined national quantified benefits of avoided cancer cases associated with these products are approximately \$6,000 per year using a three percent discount rate and \$3,000 per year using a seven percent discount rate.

(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 under the RFA.

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

EPA stated that this final rule contains a federal mandate under the Act that may result in expenditures of more than the inflation-adjusted threshold of \$100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. EPA stated it prepared a written statement as required under the Act, which is included in the docket for the rule, and summarized the statement in the preamble of the rule.

(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 April 12, 2022, EPA issued a proposed rule. 87 Fed. Reg. 21706. EPA received a total of 10,847 public comments, 158 of which were unique comments from trade organizations, industry stakeholders, environmental groups, and non-governmental health advocacy organizations, among others. EPA stated that a summary of comments and EPA's responses is available in the docket for the rule.

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

EPA determined that this final rule contains information collection requirements (ICRs) subject to PRA and stated that the ICRs have been submitted to OMB for approval under OMB Control Number 2070-0220. EPA estimated a total annual burden of 2,269 hours associated with the ICRs, and a total annual cost of \$370,973 which includes \$233,425 annualized capital or operation and maintenance costs.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to section 2605 and 2625(l)(4) of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA stated that this final rule is a significant regulatory action as defined under the Order. Accordingly, EPA noted that it submitted the rule to OMB for review.

Executive Order No. 13132 (Federalism)

EPA stated that it concluded this final rule has federalism implications as specified in the Order because regulations under section 6(a) of the Toxic Substances Control Act, Pub. L. No. 94-469, 90 Stat. 2003 (Oct. 11, 1976), may preempt state law. EPA stated it consulted with state and local officials early in the process to facilitate their input, invited officials to a meeting on May 13, 2021, and provided an opportunity to provide the agency with follow-up comments in writing. EPA noted it did not receive any such comments.