



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

B-336876

December 4, 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: Decabromodiphenyl Ether and Phenol, Isopropylated Phosphate (3:1); Revision to the Regulation of Persistent, Bioaccumulative, and Toxic Chemicals 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 “Decabromodiphenyl Ether and Phenol, Isopropylated Phosphate (3:1); Revision to the Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under the Toxic Substances Control Act (TSCA)” (RIN: 2070-AL02). We received the rule on November 1, 2024. It was published in the *Federal Register* on November 19, 2024. 89 Fed. Reg. 91486. The effective date of the rule is January 21, 2025.

This rule revises regulations for decabromodiphenyl ether and phenol, isopropylated phosphate (3:1), two of the five persistent chemicals addressed in the final rules issued under the Toxic Substances Control Act in January 2021.

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  
“DECABROMODIPHENYL ETHER AND PHENOL, ISOPROPYLATED PHOSPHATE (3:1);  
REVISION TO THE REGULATION OF PERSISTENT, BIOACCUMULATIVE,  
AND TOXIC CHEMICALS UNDER THE TOXIC SUBSTANCES CONTROL ACT (TSCA)”  
(RIN: 2070-AL02)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) prepared an analysis of the costs and benefits for this rule. See 89 Fed. Reg. 91510–91511 (Nov. 19, 2024). EPA estimated that the total quantified annualized industry costs for the rule are estimated to be \$400 million at a 3 percent discount rate and \$430 million at a 7 percent discount rate annualized over 30 years. *Id.* at 91511. EPA also assessed qualitative benefits of the rule, including decreased potential for occupational exposures and reduced potential for exposures to the general population, potentially exposed or susceptible subpopulations, and the environment. *Id.*

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

EPA stated that the EPA Administrator has certified that this rule will not have a significant economic impact on a substantial number of small entities. See 89 Fed. Reg. 91513.

(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 rule will result in expenditures of \$100 million or more, adjusted annually for inflation, for the private sector in any one year. 89 Fed. Reg. 91513. EPA described these effects and the actions they took in accordance with the Act. *Id.* In addition, EPA determined that this action imposes no enforceable duty on any state, local or tribal government and does not significantly or uniquely affect small governments. *Id.*

(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.

In its submission to us, EPA indicated the Act is 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 November 24, 2023, EPA published a proposed rule. 88 Fed. Reg. 82287. EPA stated that they received comments from various interested parties. See 89 Fed. Reg. 91491. EPA responded to comments in the rule. *Id.*

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

EPA determined that this rule contains information collection requirements under the Act. 89 Fed. Reg. 91513.

Statutory authorization for the rule

EPA promulgated this rule pursuant to 15 U.S.C. § 2605 and 15 U.S.C. § 2625(l)(4).

Executive Order No. 12866 (Regulatory Planning and Review)

EPA stated that this rule is significant under the Order. See 89 Fed. Reg. 91512–91513. EPA stated that the rule was submitted to OMB for review. *Id.* at 91513.

Executive Order No. 13132 (Federalism)

EPA determined that this rule does not have federalism implications. See 89 Fed. Reg. 91513.