



United States
General Accounting Office
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Office of the General Counsel

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December 30, 1998

The Honorable John H. Chafee
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Environmental Protection Agency: National Primary Drinking Water
Regulations: Interim Enhanced Surface Water Treatment

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 "National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment" (RIN: 2040-AC91). We received the rule on December 11, 1998. It was published in the Federal Register as a final rule on December 16, 1998. 63 Fed. Reg. 69478.

The final rule establishes the Interim Enhanced Surface Water Treatment Rule, the purpose of which is to improve control of microbial pathogens, including the protozoan *Cryptosporidium*, in drinking water and address risk trade-offs with disinfection byproducts.

Enclosed is our assessment of the 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. Our review indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation

work relating to the Environmental Protection Agency is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Thomas E. Kelly
Director, Office of Regulatory
Management and Information
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"NATIONAL PRIMARY DRINKING WATER REGULATIONS:
INTERIM ENHANCED SURFACE WATER TREATMENT"
(RIN: 2040-AC91)

(i) Cost-benefit analysis

EPA estimates that the total annualized cost for implementing the rule is \$307 million, in 1998 dollars, at 7 percent rate cost of capital. The benefits resulting from the rule range from \$0.263 billion to \$1.240 billion per year using a valuation of \$2,000 in health damages avoided per cryptosporidiosis illness prevented.

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

The Administrator of EPA has certified that the final rule will not have a significant economic impact on a substantial number of small entities because the rule only applies to water systems serving more than 10,000 persons.

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

EPA has determined that the final rule may impose a federal mandate resulting in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, and the private sector in any one year. Therefore, in compliance with section 202 of the act, EPA prepared a written statement, including a cost-benefit analysis, assessing the impact of the rule.

While the proposed rule was issued before the act became a statutory requirement, EPA consulted with governmental entities and the private sector affected by the rule.

Section 205 of the act requires agencies to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The preamble discusses the alternatives considered and why EPA believes that the alternative selected is the least costly and least burdensome consistent with the objectives of the rule.

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

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

The final rule was issued by EPA using the notice and comment procedures contained in 5 U.S.C. § 553.

On July 29, 1994, EPA published a Notice of Proposed Rulemaking in the Federal Register. 59 Fed. Reg. 38832. This proposed rulemaking followed the use of negotiated rulemaking in the area of water safety. After the July 1994 notice, EPA established a committee of public and private industry experts under the Federal Advisory Committee Act to collect and analyze information and data made available after the notice publication and to build consensus on the regulatory implications of the new data. The extensive public participation in the rulemaking is discussed in detail in the preamble and EPA also responds to the comments received in the preamble.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains an information collection which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The collection has been approved by OMB and assigned OMB control number 2040-0205.

The preamble to the final rule summarizes the reason for the collection and estimates that 998 respondents will provide 3,803 responses with an average response time of 40 hours for an estimated annual burden cost of \$27,448,013.

Statutory authorization for the rule

The final rule is issued pursuant to the authority contained in section 1412(b)(2)(C) of the 1996 amendment to the Safe Drinking Water Act.

Executive Order No. 12866

The final rule was determined to be an "economically significant" regulatory action and was reviewed and approved by the Office of Management and Budget as complying with the requirements of the order.

Executive Order No. 12898 (Environmental Justice)

EPA states that it developed the final rule in compliance with the order. EPA asserts that this is shown, in particular, by the overall nature of the rule which applies uniformly to all systems, the inclusion of sensitive sub-populations in the

regulatory development process, and the convening of a stakeholder meeting to specifically address environmental justice issues.

Executive Order No. 13045 (Protection of Children from Environmental Health Risks and Safety Risks)

While the final rule was not subject to this order because it was proposed before April 21, 1998, the effective date of the order, it has been EPA's policy since November 1, 1995, to consider risks to infants and children in all risk assessments.

Executive Order No. 12875 (Enhancing the Intergovernmental Partnership)

As required by the order, EPA consulted with state, local, and tribal governments through various meetings and state and local government representatives were part of the Federal Advisory Committee.