



**United States  
General Accounting Office  
Washington, D.C. 20548**

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**Office of the General Counsel**

B-281737

December 31, 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: Disinfectants and Disinfection Byproducts**

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: Disinfectants and Disinfection Byproducts" (RIN: 2040-AB82). 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. 69390.

The final rule establishes the maximum residual disinfectant level goals, the maximum contaminant level goals and National Primary Drinking Water Regulations for various disinfectants and disinfectant 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: DISINFECTANTS AND  
DISINFECTION BYPRODUCTS"  
(RIN: 2040-AB82)

(i) Cost-benefit analysis

EPA estimates that the total annualized cost for implementing the rule is \$701 million, in 1998 dollars, at a 7 percent rate cost of capital. EPA states that the benefits of the rule are difficult to quantify because of the uncertainty associated with risks from exposure to disinfection byproducts. However, EPA believes that there is a reasonable likelihood that the benefits will exceed the costs and, in the analysis, uses various approaches to assess the possible benefits.

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

EPA states, in the preamble, that it is unable to certify that the final rule will not have a significant economic impact on a substantial number of small entities and, therefore, has completed a Final Regulatory Flexibility Analysis and will publish a small entity compliance guide.

A small entity, for purposes of the final rule, is defined as a public water system serving 10,000 or fewer persons. The preamble discusses the objective of and the legal basis for the final rule and describes and estimates the number of small entities affected by the rule and the steps taken to minimize the impact of the rule on small entities.

To lessen the impact of the rule on small entities, EPA has extended compliance dates to 60 months for small entities that use only ground water as opposed to the 36-month compliance date for large systems, and small entities are required to conduct routine monitoring less frequently.

(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 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 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 using the notice and comment procedures contained in 5 U.S.C. § 553.

On July 29, 1994, EPA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register. 59 Fed. Reg. 38668. The NPRM followed the use by EPA of negotiated rulemaking in the area of water safety. Subsequent to the NPRM, EPA established a committee under the Federal Advisory Committee Act to collect and analyze information and data made available after the date of the NPRM and to build consensus on the regulatory implications of the new data. EPA responds to the numerous comments received in the preamble to the final rule.

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 under the Paperwork Reduction Act. The collection has been approved and issued OMB control number 2040-0204.

The preamble to the final rule contains the reason for the information collection and an estimate of the annual burden of the collection. It is estimated that the annual burden on water systems and states for reporting and recordkeeping will be 314,471 hours based on an estimated 4,631 respondents who will provide about 9,449 responses and the average response will take 33 hours. The annual labor cost is estimated to be about \$12 million per year.

Statutory authorization for the rule

The final rule was issued pursuant to the authority contained in section 1412(b)(2) of the 1996 amendments 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 the health benefits uniformly to all income and minority groups. Also, EPA convened 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 the Order because it was proposed before April 21, 1998, 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. In addition, the Office of Water has since 1989 considered risks to sensitive populations such as fetuses, infants and children in establishing drinking water assessments, advisories or other guidance and standards.

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.