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February 5, 2001

The Honorable Bob Smith
Chairman
The Honorable Harry Reid
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable W. J. (Billy) Tauzin
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: Environmental Protection Agency: National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring

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; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring” (RIN: 2040-AB75). We received the rule on January 17, 2001. It was published in the Federal Register as a final rule on January 22, 2001. 66 Fed. Reg. 6976.

The final rule establishes, among other items, a health-based, non-enforceable Maximum Contaminant Level Goal for arsenic of zero and an enforceable Maximum Contaminant Level for arsenic of 0.01 mg/L. The rule applies to non-transient, non-community water systems, which are not presently subject to standards on arsenic in drinking water, and to community water systems.

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 EPA complied with the applicable requirements.

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

evaluation work relating to the subject matter of the rule is Bob Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Mr. Jay Benforado
Deputy Associate Administrator
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;
ARSENIC AND CLARIFICATIONS TO COMPLIANCE
AND NEW SOURCE CONTAMINANTS MONITORING"
(RIN: 2040-AB75)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis for the final rule. Using a 3-percent discount rate, the total annual national system and state compliance costs are estimated at \$180.4 million. The quantified benefits of the rule range from \$140 million to \$198 million. In addition, EPA notes that there are a number of important non-quantifiable health benefits from the rule that were also considered by EPA.

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

EPA prepared an Initial Regulatory Flexibility Analysis and a Final Regulatory Flexibility Analysis in conjunction with the proposed and final rule, respectively. The analyses comply with the requirements of the Act.

The impact of the final rule on small entities, systems serving fewer than 10,000, is lessened by the availability of financial assistance from the Drinking Water State Revolving Fund and the Water and Waste Disposal Loan and Grant Program of the Rural Utilities Service. Also, systems serving fewer than 3,300 may apply for exemptions that can extend the time for compliance to up to 14 years from the effective date 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

Since the final rule contains a mandate of more than \$100 million in any one year on state, local or tribal governments, EPA has prepared the written statement required by section 202 of the Act, which is summarized in the preamble to the final rule. This includes a discussion of the alternatives considered and why EPA believes that the standard selected is the most cost-effective since it maximizes benefits.

(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 at 5 U.S.C. 553. On June 22, 2000, EPA published a Notice of Proposed Rulemaking. 65 Fed. Reg. 38888. In addition, EPA held numerous public meetings and conferences to discuss the proposed rulemaking. In the preamble to the final rule, EPA responds to the major comments it received.

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

The information collections contained in the final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB control No. 2040-0231.

Statutory authorization for the rule

The final rule is issued under the authority contained in section 1412(b)(13) of the 1996 amendments to the Safe Drinking Water Act (Pub. L. 104-182).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

EPA has determined that the final rule has federalism implications and that the rule will impose substantial direct compliance costs on state and local governments, and the federal government will not provide the funds necessary to pay these costs. Accordingly, EPA has prepared the federalism summary impact statement required by the order.