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B-336287

May 13, 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: PFAS National Primary Drinking Water Regulation*

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 “PFAS National Primary Drinking Water Regulation” (RIN: 2040-AG18). We received the rule on April 12, 2024. It was published in the *Federal Register* as a final rule on April 26, 2024. 89 Fed. Reg. 32532. The effective date of the rule is June 25, 2024.

According to EPA, this final rule finalizes National Primary Drinking Water Regulations for six per- and polyfluoroalkyl substances (PFAS). Through this action, EPA is finalizing health-based Maximum Contaminant Level Goals (MCLGs) for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) at zero. EPA stated that the rule promulgates individual Maximum Contaminant Levels (MCLs) for PFOA and PFOS at 4.0 nanograms per liter (ng/L) or parts per trillion (ppt). EPA stated that the rule also finalizes individual MCLGs and promulgates individual MCLs for perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), and hexafluoropropylene oxide dimer acid (HFPO-DA) at 10 ng/L. EPA further stated that in addition to the individual MCLs for PFHxS, PFNA, and HFPO-DA, the rule finalizes a Hazard Index of 1 (unitless) as the MCLG and MCL for any mixture containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS.

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.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

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
“PFAS NATIONAL PRIMARY DRINKING WATER REGULATION”
(RIN: 2040-AG18)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) prepared an Economic Analysis (EA) examining the potential costs and benefits associated with this final rule. EPA provided estimated annual costs and benefits from the rule and included an uncertainty range. EPA estimated annual quantified costs of \$1,548,640,000, which include total public water system costs and primacy agency costs. EPA estimated annual quantified benefits of \$1,549,400,000, which include avoided future adverse health outcomes attributable to PFAS reductions and co-removal of additional contaminants due to actions undertaken to comply with the rule. EPA estimated annual net quantified benefits of \$760,000. EPA also analyzed the potential impacts of nonquantifiable benefits and costs.

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

EPA prepared a Final Regulatory Flexibility Analysis as part of the EA. The analysis included: (1) a statement of the need for, objectives, and legal basis of the rule; (2) a summary of the Small Business Advocacy Review Panel comments and recommendations; (3) a summary of the public comments on impacts to small entities; (4) the number and description of the small entities affected by the rule; (5) a description of the compliance requirements of the rule; (6) an analysis of the impact of regulatory options on small water system costs; and (7) EPA’s steps to minimize the significant impact of the rule on small water systems.

(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 may result in expenditures of \$100 million or more, adjusted annually for inflation, for state, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA prepared a written statement required under section 202 of the Act in the EA. EPA identified and analyzed a number of regulatory alternatives to determine the maximum contaminant level requirement in the rule. EPA stated that that the provisions of section 205 of the Act do not apply when they are inconsistent with applicable law and that the requirement in section 205 to adopt the least costly, most cost-effective, or least burdensome option is inconsistent with the regulatory development requirements for National Primary Drinking Water Regulations established by statute. EPA further stated that consistent with the intergovernmental consultation provisions of section 204 of the Act, EPA consulted with governmental entities affected by 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 discuss the Act in this final rule. In its submission to us, EPA indicated that the Act does not apply 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 March 29, 2023, EPA published a proposed rule. 88 Fed. Reg. 18638. EPA responded to comments in this final rule.

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

EPA determined that this final rule contains information collection requirements under the Act. EPA stated that the information collection requirements had been submitted to OMB for approval and are not enforceable until OMB approves them. The relevant information collection is titled “PFAS National Primary Drinking Water Regulation Rulemaking” (OMB Control Number 2040-0307). EPA estimated a total burden of 2,052,000 hours and total estimated costs of \$58.9 million per year on average.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to sections 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA stated that this final rule is significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

EPA determined that this final rule has federalism implications because it imposes substantial direct compliance costs on state or local governments, and the federal government will not provide the funds necessary to pay those costs. EPA stated that it consulted with state and local governments, as well as national organizations representing state and local elected officials. EPA described the issues raised by these entities and how EPA addressed those issues.