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September 2, 2014

The Honorable Barbara Boxer  
Chairman  
The Honorable David Vitter  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Fred Upton  
Chairman  
The Honorable Henry A. Waxman  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Environmental Protection Agency: National Pollutant Discharge Elimination System—Final Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities*

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 Pollutant Discharge Elimination System—Final Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities” (RIN: 2040-AE95). We received the rule on May 21, 2014. It was published in the *Federal Register* as a final rule on August 15, 2014, with a stated effective date of October 14, 2014. 79 Fed. Reg. 48,300.

The final rule establishes requirements under section 316(b) of the Clean Water Act for existing power generating facilities and existing manufacturing and industrial facilities that are designed to withdraw more than 2 million gallons per day of water from waters of the United States and use at least 25 percent of the water they withdraw exclusively for cooling purposes. These national requirements, which will be implemented through National Pollutant Discharge Elimination System permits, apply to the location, design, construction, and capacity of cooling water intake structures at regulated facilities and provide requirements that reflect the best technology available for minimizing adverse environmental impact. According to EPA, the purpose of this rule is to reduce impingement and entrainment of fish and other aquatic organisms at cooling water intake structures used by certain existing power generation and manufacturing facilities for the withdrawal of cooling water from waters of the United States. This final rule also responds to judicial remand of aspects of the previously promulgated Phase II and Phase III section 316(b) rules. In addition, EPA is also responding to an earlier judicial decision by removing from the previously promulgated Phase I new facility rule a restoration-based compliance alternative and the associated monitoring and demonstration requirements.

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. Our review of the procedural steps taken indicates that EPA complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Nicole Owens  
Director, Regulatory Management Division  
Environmental Protection Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
"NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM—  
FINAL REGULATIONS TO ESTABLISH REQUIREMENTS  
FOR COOLING WATER INTAKE STRUCTURES AT  
EXISTING FACILITIES AND AMEND REQUIREMENTS  
AT PHASE I FACILITIES"  
(RIN: 2040-AE95)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) analyzed the costs and benefits of this final rule. EPA assessed the expected costs to society for complying with the final rule, accounting for both the existing cooling water intake structures unit provision and the new unit provision, as \$275 million and \$297 million per year at the 3 percent and 7 percent discount rates, respectively. These costs reflect permit applications, studies, recordkeeping, monitoring, and reporting required by the rule. The costs also include costs of technologies for complying with the best technology available (BTA) for impingement mortality. The cost of additional technologies that may be required to meet the site-specific BTA for entrainment are not included in this analysis because EPA could not estimate, with any level of certainty, what site-specific determinations will be made based on the analyses that will be generated as a result of the national BTA standard for entrainment decision-making established in this rule. EPA estimates that this final rule—including standards for both existing units and new units at existing facilities—will achieve monetized benefits to society of \$33 million and \$29 million annually, depending on the discount rate. This estimate of benefits omits important categories of benefits that EPA expects the rule will achieve, such as most of the benefits associated with fish other than commercially and recreationally harvested fish. As a result, these estimates are likely to understate substantially the rule's expected benefits to society. Included in the monetized benefits is EPA's estimate that the final rule will reduce greenhouse gas (GHG) emissions by 9.3 million tons of CO<sub>2</sub>-equivalent emissions over the 40-year compliance period for this analysis. Based on this reduction in GHG emissions, EPA estimates benefits to society (based on social cost of carbon) ranging from \$12 million to \$13 million annually, depending on the discount rate and other assumptions in the social cost of carbon analysis.

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

EPA determined that this final rule will not have a significant impact on a substantial number of small entities, overall and by individual industry segment.

(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 final rule contains a federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Therefore EPA prepared a written

statement under the Act. The written statement includes a list of the authorizing legislation; a cost-benefit analysis; a summary of state, local, and tribal government input; and the regulatory option selected. EPA also determined that this final rule contains no regulatory requirements that could significantly or uniquely affect small governments. EPA estimates that state and local government entities will incur annualized costs of \$0.9 million to administer the final rule for electric generators and manufacturers.

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

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

On April 20, 2011, EPA published a proposed rule. 76 Fed. Reg. 22,174. EPA published two Notices of Data Availability (NODA), on June 11, 2012, and June 12, 2012. 77 Fed. Reg. 34315, 34927. Over 1,100 organizations and individuals submitted comments on a range of issues in the proposed rule, including over an additional 62,000 letters from individuals associated with mass letter writing campaigns. EPA received an additional nearly 250 comments on the two NODAs.

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

EPA determined this final rule contains information collection requirements under the Act. EPA estimates an average annual burden of 634,596 hours for the final rule's information collection requirements. Of this total, EPA estimates that 1,068 regulated facilities will incur an annual average burden of 588 hours per respondent (for a total of 627,666 burden hours).

Statutory authorization for the rule

EPA promulgated this final rule under the authority of sections 101, 301, 304, 308, 316, 401, 402, 501, and 510 of the Clean Water Act. 33 U.S.C. §§ 1251, 1311, 1314, 1318, 1326, 1341, 1342, 1361, 1370.

Executive Order Nos. 12,866 and 13,563 (Regulatory Planning and Review)

EPA determined that this final rule is an economically significant regulatory action because it is likely to have an annual effect of \$100 million or more on the economy. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review.

Executive Order No. 12,898 (Environmental Justice)

EPA determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. Specifically, EPA found that the final rule increases the level of environmental protection for all affected populations and has no high and adverse human health or environmental effects on any population, including any minority or low-income population. Because EPA expects that this final rule will help to preserve the health of aquatic ecosystems near regulated facilities, EPA expects that all populations, including minority and low-income populations, will benefit from improved environmental conditions.

#### Executive Order No. 13,132 (Federalism)

EPA determined that this final rule does not have federalism implications under the Order as it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### Executive Order No. 13,175 (Consultation and Coordination with Indian Tribal Governments)

EPA determined that this final rule does not have tribal implications under the Order as it will not have substantial direct effects on tribal governments, on the relationship between the federal government and the tribes, or the distribution of power and responsibilities between the federal government and tribes.

#### Executive Order No. 13,211 (Energy Supply)

EPA determined that this final rule will not reduce electricity production in excess of 1 billion kWh hours per year (or one thousand gigawatt hour), will not increase the cost of energy production in excess of 1 percent, will not increase dependence on foreign supply of energy, and will not significantly affect domestic coal production. However, EPA also determined that this final rule will result in net retirement of 998 megawatt of generating capacity, which exceeds 500 megawatt of installed capacity, the threshold of significant adverse effect identified in the OMB Implementation Guidance for this Order.