

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141 and 142**

[FRL-6003-5]

RIN-2040-AD00

**Revisions to State Primacy Requirements To Implement Safe Drinking Water Act Amendments**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; interpretation.

**SUMMARY:** Today's action amends the regulations that set forth the requirements for States to obtain and retain primary enforcement authority (primacy) for the Public Water System Supervision (PWSS) program under section 1413 of the Safe Drinking Water Act (SDWA) as amended by the 1996 Amendments. This rule adds the new administrative penalty authority requirement that States must meet in order to obtain or retain primacy, plus changes the timing for a State to adopt new or revised drinking water regulations. The rule also changes a State's primacy status while awaiting a final determination on its primacy application. Additionally, the rule's language provides examples of circumstances that require an emergency plan for the provision of safe drinking water. Lastly, this action expands the definition of a *public water system* (PWS). Since all of the above changes are merely a codification of the amended SDWA, the Agency is publishing this document as a final rule.

**DATES:** This action is effective April 28, 1998 except for § 142.11 which contains information collection requirements that have not yet been approved by Office of Management and Budget (OMB). EPA will publish a document in the **Federal Register** announcing the effective date of § 142.11

**FOR FURTHER INFORMATION CONTACT:** The Safe Drinking Water Hotline, toll free (800) 426-4791, or Jennifer Melch; Regulatory Implementation Branch; Office of Ground Water and Drinking Water; EPA (4606), 401 M Street, S.W., Washington, DC 20460; telephone (202) 260-7035.

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

Entities potentially regulated by this action are those which have primary enforcement authority for the PWSS program and those which meet the criteria of the PWS definition. Regulated categories and entities include:

Category	Examples of regulated entities
Industry .....	Public Water Systems.
State Government .....	Agencies with primary enforcement authority for the PWSS program.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria in §§ 141.2, 142.2, and 142.10 and the applicability criteria in §§ 142.3 and 142.10 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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**A. Summary and Explanation of Today's Action**

40 CFR part 142, subpart B, sets out requirements for States to obtain and/or retain primacy for the Public Water System Supervision (PWSS) program as authorized by section 1413 of the Safe Drinking Water Act (SDWA). The Safe Drinking Water Act Amendments of 1996 created an additional requirement for States to obtain and/or retain primacy for the PWSS program. Section 1413(a)(6) requires States to have administrative penalty authority. Today's rule adds a provision to § 142.10 incorporating this new

requirement. Because questions have arisen on the meaning of section 1413(a)(6), today's preamble sets forth EPA's interpretation of this section.

The addition of section (e) in § 142.12 of this rule is also due to the 1996 Amendments. Section 142.12(e) explains that when a State with primacy for all existing national primary drinking water regulations submits a primacy revision application, the State is considered to have primary enforcement authority for the new or revised regulation while EPA makes a final determination on the application.

Additionally, the Agency is making revisions to § 142.10(e) to reflect the 1996 Amendments by adding examples of emergency situations and to § 142.12(b) by changing the time limitation for adopting new or revised Federal regulations. Finally, the Agency is revising the definition of a *public water system* in both Parts 141 and 142 to codify changes to the statutory definition. The new definition includes certain systems that provide water for human consumption through constructed conveyances other than pipes.

*1. Administrative Penalty Authority*

Section 1413 of the SDWA sets out the conditions under which States may apply for, and retain, primary enforcement responsibility with respect to PWSs. As amended in 1996, section 1413 now requires States to have administrative penalty authority for all violations of their approved primacy program, unless prohibited by the State constitution. This encompasses applicable requirements in parts 141 and 142 including, but not limited to, NPDWRs, variances and exemptions, and public notification. This includes administrative penalty authority for violations of any State requirements that are more stringent than the analogous Federal requirements on which they are based. However, States are not required to have administrative penalty authority for violations of State requirements that are broader in scope than the federal program, or unrelated to the approved program.

States must have the authority to impose administrative penalties on PWSs serving a population greater than 10,000 individuals in an amount that is not less than \$1,000 per day per violation. For PWSs serving a population of 10,000 individuals or less, States must have the authority to impose an administrative penalty that is "adequate to ensure compliance." However, States may establish a maximum limitation on the total

amount of administrative penalties that may be imposed on a PWS per violation.

#### Statutory Language

Section 1413 of the SDWA provides that a State will have primary enforcement responsibility for PWSs during any period for which the Administrator determines that the State meets the requirements of section 1413(a) as implemented through EPA regulations. One of the new conditions added for primacy is section 1413(a)(6), which requires that a primacy State:

(6) Has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount—

(A) In the case of a system serving a population of more than 10,000, that is not less than \$1,000 per day per violation; and

(B) In the case of any other system, that is adequate to ensure compliance (as determined by the State); except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation.

#### Interpretation of "In a Maximum Amount \* \* \* That is Not Less Than \$1,000 Per Day Per Violation"

The first issue for clarification is the meaning of requiring States to have administrative penalty authority "in a maximum amount \* \* \* that is not less than \$1,000 per day per violation." Relying on both the legislative history of the 1996 SDWA Amendments and the principles of statutory construction, EPA has interpreted the provision as discussed in the following paragraphs.

The report on Senate Bill (SB)1316 says, in explaining this provision, that States are to adopt administrative penalties of at least \$1,000 per day per violation for large systems. Since the language in the House Bill and in the final version of the SDWA amendments is identical to that in SB1316, and there is no additional explanation of this language, the report on SB1316 is a helpful indicator of Congressional intent.

Therefore, it is EPA's position that, in order to have primacy, States must have the authority to impose a maximum penalty per day per violation for systems serving a population greater than 10,000 individuals and this maximum must be \$1,000 or greater. It is critical that States have the authority to impose this penalty. However, States are not required to assess this per day per violation penalty for systems serving a population of more than 10,000

individuals. In particular cases, States may assess lesser penalties than the maximum penalty authorized by the State, so long as they retain the authority to impose a penalty of at least \$1,000 per day per violation.

A State's penalty authority must be "per day per violation." If a State has authority for administrative penalties up to a specific dollar amount (in total, or as per day, or per violation), but the authority is not expressed as an amount "per day per violation," then the authority is not sufficient to comply with this requirement.

Although not required to do so, a State may establish an administrative penalty cap. If a State establishes a cap, the cap cannot be on the total administrative penalty which may be imposed on the system but may only be on the total which may be imposed on the system "per violation." For example, a State could obtain authority for administrative penalties of \$1,000 per day per violation, not to exceed \$25,000 for each violation. If a PWS in that State had 3 maximum contaminant level violations, each of which lasted a month, the system could be assessed an administrative penalty of \$75,000. (This would be calculated as follows: The PWS had 3 violations at \$1,000 per day  $\times$  30 days for each violation; thus, the system could be assessed \$90,000, if there was no cap. However, because the State has established a cap of \$25,000 for each violation, the PWS could only be assessed the maximum for each violation— $\$25,000 \times 3 = \$75,000$ ).

#### Interpretation of "Adequate To Ensure Compliance"

The next area subject to interpretation is what penalty is "adequate to ensure compliance" for systems serving a population of 10,000 or fewer individuals. This provision is designed to give the States flexibility in dealing with the smaller systems. The provision recognizes that some of the smaller systems face special challenges in complying with the requirements of the SDWA and its regulations and may not have the financial capability to pay a large penalty. Moreover, with some of the small and very small systems, a modest penalty can serve as a great deterrent. In addition, assessing modest penalties often requires less burdensome hearing procedures and thus can be more efficient. At the same time, however, it must be remembered that a good portion of the small systems are, in fact, profit-making businesses and therefore should not be permitted to gain an economic advantage through their noncompliance with the law. Given these factors, as well as many

others, States must determine, for systems serving a population of 10,000 individuals or less, a level or levels of administrative penalties which will, in their opinion, ensure compliance. The level can be the same as that for the larger systems.

#### Determination of State Administrative Penalty Authority

As a part of the primacy application review process, EPA will review the State laws and regulations to determine whether the State has the requisite administrative penalty authority or whether its constitution prohibits the adoption of such authority. States must submit copies of their laws and regulations; States that believe that their constitution prohibits administrative penalty authority must submit a copy of their constitution and an interpretation from the State Attorney General. EPA's review will likely also include a request for a State Attorney General to provide an interpretation of the State's authority. The Attorney General's statement will be needed particularly in cases where the State laws or regulations use different language than the SDWA. EPA will also require States to submit a rationale for their determination that the chosen level of administrative penalty authority for PWSs serving a population of 10,000 individuals or less is appropriate. Additionally, EPA may request an explanation from the States on how they plan to use their penalty authority (that is, a penalty policy). In today's rule, EPA is amending 40 CFR 142.11 to clarify the documentation States must provide for EPA's review of State administrative penalty authority.

#### Process for Review and Approval of State Programs

The process EPA will use to review and approve State programs will vary based on the circumstances. In cases where the State has adequate administrative penalty authority that is already part of an approved primacy program, no formal process under Part 142 is required to approve the program. In situations where either the State has adequate administrative penalty authority but it is not part of an approved primacy program, or where the State administrative penalty authority is not adequate to meet the new requirement, the State must follow the process for primacy program revisions in 40 CFR 142.12.

If or when it becomes clear that a State is not going to obtain the required authority, or if the State is not acting in good faith to obtain the required authority, EPA will seek to begin the primacy withdrawal process under 40

CFR 142.17. There are serious consequences if a State loses primacy, including the loss of Drinking Water State Revolving Fund (DWSRF) monies.

## 2. Interim Primacy Authority

EPA has added new § 142.12(e) to incorporate the new process identified in the 1996 Amendments for granting primary enforcement authority to States while their applications to modify their primacy programs are under review. Previously, States that submitted these applications did not receive primacy for the changes in their State programs until EPA approved the applications. The new process, which is available only to States that have primacy for every existing national primary drinking water regulation in effect when the new regulation is promulgated, grants interim primary enforcement authority for a new or revised regulation during the period in which EPA is making a determination with regard to primacy for that new or revised regulation. This interim enforcement authority begins on the date of the primacy application submission or the effective date of the new or revised State regulation, whichever is later, and ends when EPA makes a final determination. Interim primacy has no effect on EPA's final determination and States should not assume that their applications will be approved based on this interim primacy.

## 3. Time Increase for Adopting Federal Regulations

EPA has amended the language in § 142.12(b) to increase the time for a State to adopt new or revised Federal regulations from 18 months to 2 years to reflect section 1413(a)(1) as revised by the 1996 Amendments.

## 4. Examples of Emergency Circumstances That Require a Plan for Safe Drinking Water

The Agency has added examples of natural disasters to § 142.10(e) to maintain consistency and uniformity with the statutory counterpart section 1413(a)(5), which was revised in the 1996 Amendments.

## 5. Revision of Public Water System Definition

Public water systems, unless they meet the four criteria enumerated in section 1411 or qualify for a variance or exemption under sections 1415 or 1416, must comply with the national primary drinking water regulations promulgated in 40 CFR Part 141. Before the 1996 Amendments, the SDWA defined a PWS as a system that provided piped water for human consumption to the public and had at least fifteen service

connections or regularly served at least twenty-five individuals. The 1996 Amendments expanded the means of delivering water to include not only systems which provide water for human consumption through pipes, but also systems which provide water for human consumption through "other constructed conveyances." In today's rule, EPA codifies this change by amending the definition of "public water system" in §§ 141.2 and 142.2 as well as by adding or clarifying several other definitions.

The 1996 Amendments did not change the connections or users served requirement. However, water suppliers that became PWSs only as a result of the changed definition will not be considered PWSs, subject to SDWA requirements, until after August 5, 1998.

### "Service Connection" Exclusions

For systems which only could become PWSs as a result of the broadened definition, the Amendments allow certain connections to be excluded, for purposes of the definition, if the water supplied by that connection meets any of the three criteria enumerated in section 1401(4)(B)(i).

First, a connection is excluded where the water is used exclusively for purposes other than "residential uses." Residential uses consist of drinking, bathing, cooking, or similar uses. Next, a connection may be excluded if the State exercising primary enforcement responsibility or the Administrator determines that "alternative water" to achieve the equivalent level of public health protection afforded by the applicable national primary drinking water regulations is provided for residential or similar uses for drinking and cooking. The third exclusion may apply where the Administrator or the State exercising primary enforcement responsibility determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

### "Special Irrigation District" Exemption

A piped water system may be considered a "special irrigation district" if it was in existence prior to May 18, 1994, and provides primarily agricultural service with only incidental residential or similar use. Special irrigation districts are not considered to be PWSs if the system or the residential or similar users of the system comply with the requirements of the alternative

water exclusion in section 1401(4)(B)(i)(II) or the treatment exclusion in section 1401(4)(B)(i)(III).

## Implementation of the New PWS Definition

Systems newly subject to SDWA regulations under the amended definition of a PWS will not be regulated until August 6, 1998, as provided in section 1401(4)(C) of the SDWA. States with primary enforcement authority must revise their programs within two years from the effective date of this regulation to include waters suppliers that became PWSs only as a result of the new PWS definition. States must follow the process for primacy program revisions in 40 CFR 142.12. To assist States in revising their programs, EPA plans to issue guidance providing a more detailed interpretation of the new definition and the statutory exclusions.

## B. Impact of These Revisions

### 1. Executive Order 12866

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### 2. Regulatory Flexibility Act

The Agency has determined that the rule being issued today is not subject to the Regulatory Flexibility Act (RFA), which generally requires an Agency to conduct a regulatory flexibility analysis of any significant impact the rule will

have on a substantial number of small entities. By its terms, the RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Today's rule is not subject to notice and comment requirements under the APA or any other statute because it falls into the interpretative statement exception under APA section 553(b) and because the Agency has found "good cause" to publish without prior notice and comment. See section B.8.

### 3. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1836.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W.; Washington, DC 20460 or by calling (202) 260-2740. The information requirements are not effective until OMB approves them.

This information collection is necessary because the SDWA Amendments of 1996 added a new element to the requirements for States to obtain and/or retain primacy for the PWSS program. In order for EPA to determine whether States meet the new administrative penalty authority requirement, States must submit a copy of their legislation authorizing the penalty authority and a description of their authority for administrative penalties that will ensure adequate compliance of systems serving a population of 10,000 individuals or less. In accordance with the procedures outlined in § 142.11(7)(i) and § 142.12(c)(iii), the State Attorney General must certify that the laws and regulations were duly adopted and are enforceable. Alternatively, if a State constitution prohibits assessing administrative penalties, the State must submit a copy of the relevant provision of the constitution as well as an Attorney General's statement confirming that interpretation. Furthermore, as provided in § 142.11(a)(7)(ii), as amended by this rule, and § 142.12(c), EPA may additionally require supplemental statements from the State Attorney General, (such as an interpretation of the statutory language), when the above supplied information is deemed insufficient for a decision.

Collecting and reporting this information will require a total

respondent cost burden estimated at \$37,954.63 and 696.20 hours. This estimate includes the time for gathering, analyzing, writing, and reporting information. There will be no capital, start-up, or operation and maintenance costs. This data collection does not involve periodic reporting or recordkeeping. Rather, this will be a one time effort of approximately 12 hours and 26 minutes by each of the 56 States who wish to adopt the administrative penalty authority necessary in order to obtain or retain primacy.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing way to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M. Street; S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W.; Washington, DC 20503; marked "Attention: Desk Officer for EPA." Review will be in accordance with the procedures in 5 CFR 1320.10. Comments are requested by June 29, 1998. Include the ICR number in any correspondence.

### 4. Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary federal program. The requirements under section 1413(a) of the SDWA are only mandatory if a State chooses to have primary enforcement responsibility for PWSs. Additionally, today's rule implements requirements specifically set forth by the Congress in sections 1401 and 1413 of the SDWA without the exercise of any discretion by EPA.

In any event, even if this rule were not excluded from the definition of "Federal intergovernmental mandate," EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal

governments, in the aggregate, or the private sector in any one year.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Additionally, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, including tribal governments. Rather, this rule primarily affects State governments. Therefore, this action does not require a small government agency plan under UMRA section 203.

Because this rule imposes no intergovernmental mandate, it also is not subject to Executive Order 12875 (Enhancing the Intergovernmental Partnership).

#### 5. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Today's action is not subject to Executive Order 13045 [62 FR 19885 (April 23, 1997)] which requires agencies to identify and assess the environmental health and safety risks of their rules on children. Pursuant to the definitions in section 2–202, Executive Order 13045 only applies to rules that are economically significant as defined under Executive Order 12866 and concern an environmental health or safety risk that may disproportionately affect children. This rule is not economically significant and does not concern a risk disproportionately affecting children.

#### 6. Submission to Congress and the General Accounting Office

The Congressional Review Act, (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As discussed in Section B.8., EPA has made such a good cause finding for this rule, including the reasons therefore, and established an effective date of April 28, 1998. EPA will submit a report containing this rule and other required information to the

U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States Office prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### 7. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. Because this rule does not involve or require the use of any technical standards, EPA does not believe that this Act is applicable to this rule. Moreover, EPA is unaware of any voluntary consensus standards relevant to this rulemaking. Therefore, even if the Act were applicable to this kind of rulemaking, EPA does not believe that there are any "available or potentially applicable" voluntary consensus standards.

#### 8. Administrative Procedure Act

Because this rule merely codifies and interprets a statute, the amended SDWA, it is an "interpretative rule." As a result, it is exempt from the notice and comment requirements for rulemakings under section 553 of the APA (*See* section 553(b)(3)(A)). In addition, because this rule merely codifies statutory requirements and makes clarifying changes to the rules necessary to implement the amended statute, notice and comment is "unnecessary" and thus the Agency has "good cause" to publish this rule without prior notice and comment (APA section 553(b)(3)(B)). For the same reasons, EPA is making the provisions of this rule effective upon promulgation, as authorized under the APA (*See* sections 553(d)(2) and (3)). However, systems newly subject to SDWA regulation under the amended definition will not be regulated until August 6, 1998 as provided in the 1996 Amendments.

#### List of Subjects in 40 CFR Parts 141 and 142

Environmental protection, Administrative practices and procedures, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Indians.

Dated: April 17, 1998.

**Carol M. Browner,**  
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR Parts 141 and 142 as follows:

#### PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. In § 141.2 by revising the definitions of *non-community water system* and *public water system* and adding the following definitions in alphabetical order.

#### § 141.2 Definitions.

\* \* \* \* \*

*Non-community water system* means a public water system that is not a community water system. A non-community water system is either a "transient non-community water system (TWS)" or a "non-transient non-community water system (NTNCWS)."

\* \* \* \* \*

*Public water system* or *PWS* means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system."

\* \* \* \* \*

*Service connection*, as used in the definition of *public water system*, does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if:

(1) The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(2) The State determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(3) The State determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

*Special irrigation district* means an irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions in section 1401(4)(B)(i)(II) or (III).

**PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION**

1. The authority citation for part 142 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

2. In § 142.2 by revising the definition of *public water system* and adding the following definitions in alphabetical order.

**§ 142.2 Definitions.**

*Public water system* or *PWS* means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes:

Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water

system is either a "community water system" or a "noncommunity water system" as defined in § 141.2.

*Service connection*, as used in the definition of *public water system*, does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if:

(1) The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(2) The Administrator or the State exercising primary enforcement responsibility for public water systems, determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(3) The Administrator or the State exercising primary enforcement responsibility for public water systems, determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

*Special irrigation district* means an irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions in section 1401(4)(B)(i)(II) or (III).

3. In § 142.10 by revising paragraph (e), redesignating paragraph (f) as paragraph (g) and adding paragraph (f) to read as follows:

**§ 142.10 Requirements for a determination of primary enforcement responsibility.**

(e) Has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances including, but not limited to, earthquakes, floods, hurricanes, and other natural disasters.

(f)(1) Has adopted authority for assessing administrative penalties unless the constitution of the State prohibits the adoption of such authority. For public water systems serving a population of more than 10,000 individuals, States must have the authority to impose a penalty of at least \$1,000 per day per violation. For public

water systems serving a population of 10,000 or fewer individuals, States must have penalties that are adequate to ensure compliance with the State regulations as determined by the State.

(2) As long as criteria in paragraph (f)(1) of this section are met, States may establish a maximum administrative penalty per violation that may be assessed on a public water system.

4. In § 142.11 by redesignating paragraph (a)(6) as paragraph (a)(7) and adding new paragraph (a)(6) to read as follows:

**§ 142.11 Initial determination of primary enforcement responsibility.**

(a) (6)(i) A copy of the State statutory and regulatory provisions authorizing the executive branch of the State government to impose an administrative penalty on all public water systems, and a brief description of the State's authority for administrative penalties that will ensure adequate compliance of systems serving a population of 10,000 or fewer individuals.

(ii) In instances where the State constitution prohibits the executive branch of the State government from assessing any penalty, the State shall submit a copy of the applicable part of its constitution and a statement from its Attorney General confirming this interpretation.

5. Amend § 142.12, by revising paragraph (b)(1) and by adding paragraph (e) to read as follows:

**§ 142.12 Revision of State programs.**

(1) Complete and final State requests for approval of program revisions to adopt new or revised EPA regulations must be submitted to the Administrator not later than 2 years after promulgation of the new or revised EPA regulations, unless the State requests an extension and the Administrator has approved the request pursuant to paragraph (b)(2) of this section. If the State expects to submit a final State request for approval of a program revision to EPA more than 2 years after promulgation of the new or revised EPA regulations, the State shall request an extension of the deadline before the expiration of the 2-year period.

(e) *Interim primary enforcement authority.* A State with an approved primacy program for each existing national primary drinking water regulation shall be considered to have interim primary enforcement authority

with respect to each new or revised national drinking water regulation that it adopts beginning when the new or revised State regulation becomes effective or when the complete primacy revision application is submitted to the Administrator, whichever is later, and shall end when the Administrator approves or disapproves the State's revised primacy program.

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