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## National Primary Drinking Water Regulations: Minor Corrections and Clarification to Drinking Water Regulations; National Primary Drinking Water Regulations for Lead and Copper

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[OW-2003-0066; FRL-7779-4]

RIN 2040-AE58

National Primary Drinking Water Regulations: Minor Corrections and Clarification to Drinking Water Regulations; National Primary Drinking Water Regulations for Lead and Copper

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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SUMMARY: This rule makes minor changes to clarify and correct EPA's Drinking Water regulations. This rule clarifies typographical errors, inadvertent omissions, editorial errors, and outdated language in the final Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), the Surface Water Treatment Rule, and other rules. In addition to these clarifications, EPA is adding optional monitoring for disinfection profiling and an earlier compliance date for some requirements in the LT1ESWTR, and a detection limit for the Uranium Methods.

Also, EPA is reinstating text that was inadvertently dropped from the Lead and Copper Rule which listed the facilities that must be sent public education brochures by a public water system that has exceeded the action level for lead or copper.

DATES: This final rule is effective on July 29, 2004, except for the amendment to Sec. 141.85(c)(2)(iii) which is effective June 29, 2004. For purposes of judicial review, this final rule is promulgated as of 1 p.m., eastern time on July 13, 2004, as provided in 40 CFR 23.7.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW-2003-0066. All documents in the docket are listed in the EDOCKET

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index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. If you would like to schedule an appointment for access to docket material, please call (202) 566-2426.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Safe Drinking Water Hotline, telephone (800) 426-4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5:30 p.m., eastern time. For technical inquiries, contact Tracy Bone, Office of Ground Water and Drinking Water, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564-5257; fax: (202) 564-3767; e-mail address: [bone.tracy@epa.gov](mailto:bone.tracy@epa.gov).

SUPPLEMENTARY INFORMATION:

I. General Information

Entities potentially regulated by this action are public water systems (PWS). The following table provides examples of the regulated entities under this rule. A public water system, as defined by section 1401 of the Safe Drinking Water Act (SDWA), is ``a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.'' EPA defines ``regularly served'' as receiving water from the system 60 or more days per year. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities
State, Tribal and Local Government	State, tribal or local government-owned/operated water supply systems using ground water, surface water or mixed ground water and surface water.
Federal Government.....	Federally owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.
Industry.....	Privately owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.

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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 facility is regulated by this action, you should carefully examine the applicability criteria in Sec. Sec. 141.2 and 141.3 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.

## II. Changes and Clarifications

EPA is promulgating today, all of the changes and clarifications proposed on March 2, 2004 ([69 FR 9781](#)), with the exception of two proposed clarifications discussed in section F concerning calibration of turbidimeters. Each clarification and change promulgated today is discussed under the heading of the drinking water rule that it amends (e.g., LT1ESWTR). EPA is also promulgating today an additional clarification, which was not in the March 2, 2004, Minor Corrections and Clarification to Drinking Water Regulations proposal. This clarification is discussed in section III.

In addition to clarifications of typographical and editorial errors, EPA is revising the LT1ESWTR to add optional monitoring for disinfection profiling and an earlier compliance date for some requirements in that rule. EPA is also promulgating a detection limit for the uranium methods. These three changes are discussed first.

### A. LT1ESWTR Compliance Date Change and Optional Monitoring for Disinfection Profiling

The final LT1ESWTR was published on January 14, 2002 ([67 FR 1812](#)). In Sec. 141.502 of the LT1ESWTR, EPA directed PWSs to ``comply with these requirements in this subpart beginning January 14, 2005, except where otherwise noted.'' Today's rule changes the compliance date from January 14, 2005, to January 1, 2005, in Sec. 141.502 as well as in endnote 8 of Subpart Q, Appendix B. EPA's reasons for moving the compliance date forward by two weeks are set forth in the preamble to the proposed rule at [69 FR 9782](#).

EPA is also changing the compliance date in two additional sections, Sec. Sec. 141.73(a)(4) and 141.170(d), which reference the January 14, 2005, date. These two citations should have been included in the March 2, 2004, proposal.

By changing Sec. 141.502, the following 12 requirements will have a compliance deadline of January 1, 2005, instead of January 14, 2005: Sec. Sec. 141.520, 141.521, 141.522, 141.550, 141.551, 141.552, 141.553, 141.560, 141.561, 141.562, 141.563, and 141.564. July 1, 2003 (or January 1, 2004, for systems serving fewer than 500 persons), remains the compliance date for Sec. Sec. 141.530-141.536. March 15, 2002, remains the compliance date for Sec. 141.511.

In addition to changing the compliance date, EPA is adding a sentence to Sec. 141.531 to clarify that States may approve a more representative total trihalomethanes (TTHM) and haloacetic acids (five)

(HAA5) data set (optional monitoring) to avoid the disinfection profile monitoring required in Sec. 141.530. EPA's intent was to allow this flexibility in the final LT1ESWTR rule ([67 FR 1820](#), January 14, 2002). EPA had failed to make this flexibility explicit in that regulation.

#### B. Detection Limit for Compliance Monitoring of Uranium

The December 7, 2000, final Radionuclides Rule ([65 FR 76708](#)) included a detection limit for gross alpha, radium-226 and radium-228, and reserved a place for a uranium detection limit in Table B at Sec. 141.25(c)(1). In today's action, EPA is amending Table B at Sec. 141.25(c)(1) to add a detection limit of 1 [mu]g/L for uranium. Establishing a uranium detection limit permits States the flexibility to substantially reduce the number of compliance samples and the frequency of repeat monitoring for uranium.

#### C. Radionuclide Rule Clarifications

In addition to amending the detection limit for uranium, EPA is making two clarifications to the final Radionuclide Rule (December 7, 2000, [65 FR 76708](#)). In Sec. 141.26(b)(2)(iv), EPA is adding ``screening level'' to the first sentence. (Note also, that the second ``beta'' in this sentence is a typographical error, and under today's rule is being removed.) Similarly, EPA is clarifying in Sec. 141.26(b)(5), that there are two screening levels by adding the word ``appropriate'' to the first sentence so that it reads ``\* \* \* exceeds the appropriate screening level \* \* \*.''' In addition, in the text that proposed to revise Sec. 141.26(b)(5), we inadvertently referenced a nonexistent Table E, ``or Table E in 141.66(d)''--this reference is deleted in this final rule.

In Sec. 141.26(b)(6), EPA is revising the citation ``(b)(1)(ii)'' to read ``(b)(1)(i),'' and is revising citation ``(b)(2)(i)'' to read ``(b)(2)(iv).'' These were typographical errors and should have been (b)(1)(i) and (b)(2)(iv), which refer to meeting the screening level requirements until the system meets the requirements for reduced monitoring.

#### D. LT1ESWTR Clarifications

In addition to changing the date in Sec. 141.502 to reduce monitoring burden as well as to allow States to approve alternative data sets for optional monitoring in Sec. 141.531, EPA is clarifying typographical errors in the final LT1ESWTR. In Subpart Q Appendix B, in endnotes 4 and 8, the year of publication for the Long Term 1 Enhanced Surface Water Treatment Rule is incorrectly identified as 2001 when it should be 2002. Also in endnote 4, the word ``monthly'' is misspelled. In Sec. 141.530 EPA is removing the grammatically incorrect, plural ``s'' from ``systems'' in the sentence ``If you are a subpart H community or non-transient non-community water systems which serves fewer \* \* \*.''

Two typographical errors are being corrected in Sec. 141.534. In the introductory paragraph for Sec. 141.534, EPA inadvertently omitted a reference to Sec. 141.74(b)(3)(v), which provides tables for determining the appropriate CT99.9 value to calculate the inactivation ratio. EPA is changing the introductory paragraph of Sec. 141.534 to: ``Use the tables in Sec. 141.74(b)(3)(v) to determine the appropriate

CT99.9 value. Calculate the total inactivation ratio as follows, and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*:

In the table in Sec. 141.534(a)(2), EPA is changing the ``3'' to ``[Sigma]'' in the CT calculation formula. EPA inadvertently changed the ``[Sigma]'' to a ``3'' during a text file conversion.

In Sec. 141.551(a)(2), EPA is adding a ``t'' to the ``no'' in ``A value determined by the State (no to exceed 1 NTU) \* \* \*''. In Sec. 141.551(b)(2), EPA is adding the word ``Filtration'' to the phrase ``All other `Alternative' '' so that it matches related language in Sec. 141.551(a)(2).

EPA is deleting the last sentence in the second column in the table in Sec. 141.563(b), because it is redundant. Also in the same table in Sec. 141.563(c), the first column contains a typographical error. The acronym ``BTU'' will read ``NTU'' (Nephelometric Turbidity Units).

In the table in Sec. 141.570(b)(2), EPA is adding the phrase: ``and the cause (if known) for the exceedance(s)'' to the description of information to report under Sec. 141.570(b)(2). As a result, the entire paragraph will read: ``The filter

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number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month, and the cause (if known) for the exceedance(s), but only if 2 consecutive measurements exceeded 1.0 NTU.''

This action redesignates the LT1ESWTR special primacy text as Sec. 142.16(p). In addition, EPA is revising a citation in Sec. 142.16 (p)(2)(ii) to ``141.536'' to read ``141.535.''' This was a typographical error and should have been ``141.535,''' which refers to calculating inactivation.

#### E. Stage 1 Disinfectants and Disinfection Byproducts Rule

The Stage 1 Disinfectants and Disinfection Byproducts Rule was promulgated on December 16, 1998 ([63 FR 69390](#)). This rule required systems to measure and report, among other things, violations of maximum residual disinfectant levels (MRDLs), see Sec. 141.134(c)(1)(iv) (see [63 FR 69422](#) and [69472](#)). However, EPA failed to add compliance with the applicable MRDL to the compliance requirements in Sec. 141.133(a)(3). EPA is correcting this, and the language in Sec. 141.133(a)(3) now reads ``If, during the first year of monitoring under Sec. 141.132, any individual quarter's average will cause the running annual average of that system to exceed the MCL for total trihalomethanes, haloacetic acids (five), or bromate; or the MRDL for chlorine or chloramine, the system is out of compliance at the end of that quarter.''' The burden for this requirement was already accounted for in the approved Information Collection Request No. 1895.02.

Also, in the final Stage 1 Disinfectants and Disinfection Byproducts Rule, EPA incorrectly cited in Sec. 142.14(d)(12)(iv) and Sec. 142.14(d)(13) a reference to Sec. 142.16(f). The reference for both sections is now being revised to read Sec. 142.16(h)(2) and Sec. 142.16(h)(5) respectively.

#### F. Surface Water Treatment Rule

The Surface Water Treatment Rule (SWTR) was promulgated on June 29, 1989 (54 FR 27486). In that final rule, EPA incorrectly cited in Sec. 141.74(b)(4)(ii) a reference to Sec. 142.72(a). This citation is being corrected to read Sec. 141.72(a).

Today's rule does not include the proposed clarifications (March 2, 2004, [69 FR 9784](#)) concerning the calibration of turbidimeters in Sec. 141.174(a) (Interim Enhanced Surface Water Treatment Rule (IESWTR)) and in Sec. 141.560(b) (LT1ESWTR). EPA is deferring a decision on this clarification until additional information provided in a public comment can be evaluated.

EPA is changing all citations to Sec. 141.74(a)(3) or (4) to Sec. 141.74(a)(1), and all citations to Sec. 141.74(a)(5) to Sec. 141.74(a)(2) to reflect revisions to the SWTR as described in the proposal.

Table 1.--References to the Surface Water Treatment Rule

SWTR provisions with incorrect cross references	Amendment
141.71(a)(2)	``(a)(4)'' to (a)(1)
141.71(c)(2)(i)	``(a)(4)'' to (a)(1)
141.72(a)(3)	``(a)(5)'' to (a)(2)
141.72(a)(4)(i)	``(a)(3)'' to (a)(1) and ``(a)(5)'' to (a)(2)
141.72(a)(4)(ii)	``(a)(3)'' to (a)(1)
141.72(b)(2)	``(a)(5)'' to (a)(2)
141.72(b)(3)(i)	``(a)(5)'' to (a)(2) and, ``(a)(3)'' to (a)(1)
141.72(b)(3)(ii)	``(a)(3)'' to (a)(1)
141.73(a)(1)	``(a)(4)'' to (a)(1)
141.73(a)(2)	``(a)(4)'' to (a)(1)
141.73(b)(1)	``(a)(4)'' to (a)(1)
141.73(b)(2)	``(a)(4)'' to (a)(1)
141.73(c)(1)	``(a)(4)'' to (a)(1)
141.73(c)(2)	``(a)(4)'' to (a)(1)
141.74(b)(6)(ii)	``(a)(3)'' to (a)(1)
141.74(c)(3)(i)	``(a)(3)'' to (a)(1)
141.74(c)(3)(ii)	``(a)(3)'' to (a)(1)
141.75(a)(2)(viii)(G)	``(a)(3)'' to (a)(1)
141.75(b)(2)(iii)(G)	``(a)(3)'' to (a)(1)

G. Filter Backwash Recycling Rule

The Filter Backwash Recycling Rule (FBRR) was promulgated on June 8, 2001 ([66 FR 31086](#)). EPA inadvertently provided incomplete citations in subpart Q, Appendix A of the Public Notification rule for the FBRR violations. In entry I.A.(8) of 40 CFR part 141, subpart Q, Appendix A, EPA is adding a ``(c)'' to the ``MCL/MRDL/TT violations Citation'' column of Sec. 141.76; and, in the ``Monitoring & testing procedure violations Citation'' column EPA has added ``(b), (d)'' to Sec. 141.76.

The FBRR preamble ([66 FR 31086, 31094](#)) explicitly states that violations of the recordkeeping and reporting portions of this treatment technique trigger public notification (PN) obligations under

40 CFR part 141, subpart Q. EPA is clarifying the PN rule by striking the reference to reporting violations in Appendix A, endnote 1, and explicitly adding Sec. Sec. 141.76(b), (c) and (d) to the list of categories requiring reporting in Appendix A (previous reference was to the entire Sec. 141.76).

#### H. Bottled Water

In a November 1995 final rule (60 FR 57132), the Food and Drug Administration (FDA) moved their standards of quality for bottled water from 21 CFR 103.35 to 21 CFR 165.110. EPA is correcting a reference in our regulations in Sec. 142.62(g)(2) to reflect the updated citation of these FDA regulations.

#### I. Information Collection Rule

The Information Collection Rule (ICR) was promulgated on May 14, 1996 ([61 FR 24354](#)). The requirements promulgated in the ICR expired on December 31, 2000. As a result, the ICR requirements (referred to as subpart M--Information Collection Requirements (ICRs) for Public Water Systems) were removed from the Code of Federal Regulations in 2001. However, there were remaining references to the data collected as a result of the ICR in other sections of part 141 that refer to ``subpart M.'' EPA is deleting the phrase ``or subpart M of this part'' from Sec. 141.132(a)(5). EPA is not deleting or revising the other references to subpart M because the data collected under the ICR are still being used.

#### J. Phase V Rule

In the final Phase V Rule (July 17, 1992, 57 FR 31776), EPA published a list of Best Available Technologies (BATs) for cyanide, see Sec. 141.62(c). EPA is making the list more specific as to the type of chlorination (``alkaline chlorination'').

#### III. Correction in the Lead and Copper Rule Public Education Requirement

In this final version of the rule, EPA is reinstating the list of the facilities that must be sent public education brochures by a public water system that has exceeded the action level for lead or copper. This list was included in the final Lead and Copper Rule, in Sec. 141.85(c)(2)(iii) (June 7, 1991, 56 FR 26460; 26555) and published in the Code of Federal Regulations (CFR) from 1991 to 1999. However, a technical drafting error in the way in which EPA drafted its language of amendment for revisions to the LCR in 2000 caused the Office of Federal Register to delete this text from the 2001 edition of the CFR (January 12, 2000, [65 FR 1950, 2007](#)). Thus, the current CFR text contains only a requirement to deliver public education materials ``to facilities and organizations, including the following:'' with no text following the colon. To remedy this, EPA is reinstating the missing text, specifically subparagraphs (A) through (G). Section 141.85(c)(2)(iii) will once again read as follows:

(iii) Deliver pamphlets and/or brochures that contain the public education materials in paragraphs (a)(1)(ii) and (a)(1)(iv) of this section to

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facilities and organizations, including the following:

- (A) Public schools, and/or local school boards;
- (B) City or county health department;
- (C) Women, Infants, and Children and/or Head Start Program(s) whenever available;
- (D) Public and private hospitals and/or clinics;
- (E) Pediatricians;
- (F) Family planning clinics; and
- (G) Local welfare agencies.

Section 553 of the Administrative Procedure Act, 5 U.S.C.

553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing prior notice and an opportunity for public comment. EPA is reinstating the list of facilities that must be sent public education brochures by a public water system that has exceeded the action level for lead or copper. EPA has determined that there is ``good cause'' for making this rule change final without prior proposal and opportunity for comment because this list was the product of a prior notice-and-comment rulemaking, see (June 7, 1991, 56 FR 26502), it had appeared in the CFR for several years, the deletion was due solely to a technical drafting error in a subsequent rule, and the list is not controversial. Thus, additional notice and public comment is not necessary. EPA finds that this constitutes ``good cause'' under 5 U.S.C. 553(b)(B). For the same reasons, EPA is making this rule change effective upon publication. 5 U.S.C. 553(d)(3).

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, ([58 FR 51735](#) (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:

- (1) 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;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) 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.

##### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This action modifies and clarifies existing regulations. It does not add monitoring, recordkeeping or reporting requirements.

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 ways 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 in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the Federal Register and taking comment. 5 U.S.C. 601(3)-(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. As required by the RFA requirements, EPA proposed using this alternative definition in the Federal Register, ([63 FR 7620](#), February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and finalized in the alternative definition in the Consumer Confidence Reports regulation ([63 FR 44511](#), August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

The optional monitoring for disinfection profiling provides

flexibility for PWSs complying with LT1ESWTR. The earlier compliance date will not increase the cost of complying with LT1ESWTR since the monitoring and reporting requirements are unchanged. By specifying the detection limit for uranium, States have the flexibility to waive some monitoring for PWSs with samples below the detection limit. This action will not add new requirements.

This final rule imposes no cost on any entities over and above those imposed by previously published drinking water rules. This action corrects and clarifies existing regulations.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are public water systems serving 10,000 or fewer persons. We have determined that no number of small entities will experience an impact.

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#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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. This final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This action corrects and clarifies existing regulations. The optional monitoring for disinfection profiling provides flexibility for PWSs to comply with LT1ESWTR. The earlier compliance date will not increase the cost of complying with LT1ESWTR since the monitoring and reporting requirements are unchanged. By specifying the detection limit for uranium, EPA provides States with

the flexibility to waive some monitoring for PWSs with samples below the detection limit. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This action corrects and clarifies existing regulations. Thus, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled ``Federalism'' ([64 FR 43255](#), August 10, 1999), requires EPA to develop an accountable process to ensure ``meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ``Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This final rule does not have Federalism implications. 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, as specified in Executive Order 13132. There is no cost to State and local governments, and the final rule does not preempt State law. This action corrects and clarifies existing regulations. The optional monitoring for disinfection profiling provides flexibility for PWSs to comply with LT1ESWTR. The earlier compliance date will not increase the cost of complying with LT1ESWTR since the monitoring and reporting requirements are unchanged. By specifying the detection limit for uranium, States have the flexibility to waive some monitoring for PWSs with samples below the detection limit. Thus, Executive Order 13132 does not apply to this final rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

#### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ``Consultation and Coordination with Indian Tribal Governments'' ([59 FR 22951](#), November 9, 2000), requires EPA to develop an accountable process to ensure ``meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ``Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ``substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

There is no cost to tribal governments, and the rule does not preempt tribal law. This action corrects and clarifies existing regulations. Thus, Executive Order 13175 does not apply to this rule. Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials.

#### G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: ``Protection of Children from Environmental Health Risks and Safety Risks'' ([62 FR 19885](#), April 23, 1997) applies to any rule that: (1) Is determined to be ``economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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#### H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ``Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' ([66 FR 28355](#) (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

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

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (``NTTAA''), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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. 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 prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a ``major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 29, 2004, except for the amendment to Sec. 141.85(c)(2)(iii) which is effective June 29, 2004.

#### List of Subjects

##### 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

##### 40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: June 22, 2004.

Michael O. Leavitt,  
Administrator.

- For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended 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-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

#### Sec. 141.25 [Amended]

- 2. Section 141.25(c)(1) is amended in the entry for uranium in the second column of Table B by removing the word ``reserve'' and adding in its place ``1 [mu]g/L''.

- 3. Section 141.26 is amended as follows:

- a. Revise paragraphs (b)(2)(iv) and (b)(5); and
- b. In paragraph (b)(6) remove the citation ``(b)(1)(ii)'' and add in its place ``(b)(1)(i)'' and remove the citation ``(b)(2)(i)'' and add in its place ``(b)(2)(iv)''.

The revisions read as follows:

Sec. 141.26 Monitoring frequency and compliance requirements for radionuclides in community water systems.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L (screening level), the State may reduce the frequency of monitoring at that sampling point to every 3 years. Systems must collect the same type of samples required in paragraph (b)(2) of this section during the reduced monitoring period.

\* \* \* \* \*

(5) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the appropriate screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with Sec. 141.66(d)(1), using the formula in Sec. 141.66(d)(2). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

\* \* \* \* \*

#### Sec. 141.62 [Amended]

- 4. Section 141.62(c) is amended as follows:
- a. In the Table ``BAT FOR INORGANIC COMPOUNDS LISTED IN SECTION 141.62(b)'' amend the entry for ``cyanide'' by replacing the ``10'' with ``13''; and
- b. In the list ``Key to BATS in Table 1'', add to the end of the list, ``13 = Alkaline Chlorination (pH [gteqt] 8.5)''.

#### Sec. 141.71 [Amended]

- 5. Section 141.71 is amended as follows:
- a. In paragraph (a)(2) introductory text remove the citation ``Sec. 141.74(a)(4)'' and add in its place ``Sec. 141.74(a)(1)'' and
- b. In paragraph (c)(2)(i) remove the citation ``Sec. 141.74(a)(4)'' and add in its place ``Sec. 141.74(a)(1)''.

#### Sec. 141.72 [Amended]

- 6. Section 141.72 is amended as follows:
- a. In paragraph (a)(3) remove the citation ``Sec. 141.74(a)(5)'' and add in its place ``Sec. 141.74(a)(2)'';
- b. In paragraph (a)(4)(i) remove the citation ``Sec. 141.74(a)(5)'' and add in its place ``Sec. 141.74(a)(2)'' and remove the citation ``Sec. 141.74(a)(3)'' and add in its place ``Sec. 141.74(a)(1)'';
- c. In paragraph (a)(4)(ii) remove the citation ``Sec. 141.74(a)(3)'' and add in its place ``Sec. 141.74(a)(1)'';
- d. In paragraph (b)(2) remove the citation ``Sec. 141.74(a)(5)'' and add in its place ``Sec. 141.74(a)(2)'';
- e. In paragraph (b)(3)(i) remove the citation ``Sec. 141.74(a)(5)'' and add in its place ``Sec. 141.74(a)(2)''; remove the citation ``Sec. 141.74(a)(3)'' and add in its place ``Sec. 141.74(a)(1)''; and
- f. In paragraph (b)(3)(ii) remove the citation ``Sec. 141.74(a)(3)'' and add in its place ``Sec. 141.74(a)(1)''.

#### Sec. 141.73 [Amended]

- 7. Section 141.73 is amended as follows:

- a. In paragraph (a)(1) remove both citations ``Sec. 141.74(a)(4)'' and add in their place ``Sec. 141.74(a)(1)'';
- b. In paragraph (a)(2) remove the citation ``Sec. 141.74(a)(4)'' and add in its place ``Sec. 141.74(a)(1)'';
- c. In paragraph (a)(4) remove the date ``January 14, 2005'' and add in its place ``January 1, 2005'';

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- d. In paragraph (b)(1) remove the citation ``Sec. 141.74(a)(4)'' and add in its place ``Sec. 141.74(a)(1)'';
- e. In paragraph (b)(2) remove the citation ``Sec. 141.74(a)(4)'' and add in its place ``Sec. 141.74(a)(1)'';
- f. In paragraph (c)(1) remove the citation ``Sec. 141.74(a)(4)'' and add in its place ``Sec. 141.74(a)(1)''; and
- g. In paragraph (c)(2) remove the citation ``Sec. 141.74(a)(4)'' and add in its place ``Sec. 141.74(a)(1)''.

Sec. 141.74 [Amended]

- 8. Section 141.74 is amended as follows:
  - a. In paragraph (b)(4)(ii) remove the citation ``Sec. 142.72(a)'' and add in its place ``Sec. 141.72(a)'';
  - b. In paragraph (b)(6)(ii) remove the citation ``(a)(3)'' and add in its place ``(a)(1)'';
  - c. In paragraph (c)(3)(i) remove the citation ``(a)(3)'' and add in its place ``(a)(1)''; and
  - d. In paragraph (c)(3)(ii) remove the citation ``(a)(3)'' and add in its place ``(a)(1)''.

Sec. 141.75 [Amended]

- 9. Section 141.75 is amended as follows:
  - a. In paragraph (a)(2)(viii)(G) remove the citation ``Sec. 141.74(a)(3)'' and add in its place ``Sec. 141.74(a)(1)''; and
  - b. In paragraph (b)(2)(iii)(G) remove the citation ``Sec. 141.74(a)(3)'' and add in its place ``Sec. 141.74(a)(1)''.
- 10. Amend Sec. 141.85 by adding paragraphs (c)(2)(iii) (A) through (G) to read as follows:

Sec. 141.85 Public education and supplemental monitoring requirements.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(A) Public schools, and/or local school boards;

(B) City or county health department;

(C) Women, Infants, and Children and/or Head Start Program(s)

whenever available;

(D) Public and private hospitals and/or clinics;

(E) Pediatricians;

(F) Family planning clinics; and

(G) Local welfare agencies.

\* \* \* \* \*

Sec. 141.132 [Amended]

- 11. Section 141.132 is amended in paragraph (a)(5) by removing the reference to ``or subpart M of this part''.
- 12. In Sec. 141.133 revise paragraph (a)(3) to read as follows:

Sec. 141.133 Compliance requirements.

(a) \* \* \*

(3) If, during the first year of monitoring under Sec. 141.132, any individual quarter's average will cause the running annual average of that system to exceed the MCL for total trihalomethanes, haloacetic acids (five), or bromate; or the MRDL for chlorine or chloramine, the system is out of compliance at the end of that quarter.

\* \* \* \* \*

Sec. 141.170 [Amended]

- 13. In paragraph (d) remove the date ``January 14, 2005'' and add in its place ``January 1, 2005''.

Appendix A to Subpart Q of Part 141 [Amended]

- 14. In Subpart Q, Appendix A is amended as follows:
  - a. In entry I.A.(8) remove the citation in the third column ``141.76'' and add in its place ``141.76(c)'' and remove the citation in the fifth column ``141.76'' and add in its place ``141.76 (b), (d)''.
  - b. Amend endnote 1 by removing the words ``reporting violations and'' from the first parenthetical phrase.
- 15. In Subpart Q, Appendix B revise endnotes 4 and 8 to read as follows:

Appendix B to Subpart Q of Part 141--Standard Health Effects Language for Public Notification

\* \* \* \* \*

\4\ There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, and the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule and the 2002 Long Term 1 Enhanced Surface Water Treatment Rule. The MCL for the monthly turbidity average is 1 NTU; the MCL for the 2-day average is 5 NTU for systems that are required to filter but have not yet installed filtration (40 CFR 141.13).

\* \* \* \* \*

\8\ There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, the 1989 Surface Water Treatment Rule (SWTR), the 1998 Interim Enhanced Surface Water Treatment Rule (IESWTR) and the 2002 Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). For systems subject to the IESWTR (systems serving at least 10,000 people, using surface water or ground water under the direct influence of surface water), that use conventional filtration or direct filtration, after January 1, 2002, the turbidity level of a system's combined filter

effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the IESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency. For systems subject to the LTIESWTR (systems serving fewer than 10,000 people, using surface water or ground water under the direct influence of surface water) that use conventional filtration or direct filtration, after January 1, 2005, the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the LTIESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency.

\* \* \* \* \*

- 16. Revise Sec. 141.502 to read as follows:

Sec. 141.502 When must my system comply with these requirements?

You must comply with these requirements in this subpart beginning January 1, 2005, except where otherwise noted.

Sec. 141.530 [Amended]

- 17. In Sec. 141.530 in the second sentence, revise ``water systems'' to read ``water system''.
- 18. Amend Sec. 141.531 by adding the following sentence to the end of the section, to read as follows:

Sec. 141.531 What criteria must a State use to determine that a profile is unnecessary?

\* \* \* Your State may approve a more representative TTHM and HAA5 data set to determine these levels.

- 19. Section 141.534 is amended as follows:
  - a. By revising the introductory paragraph,
  - b. In the table in paragraph (a)(2), remove the ``3'' and add in its place ``[Sigma]''.

Sec. 141.534 How does my system use this data to calculate an inactivation ratio?

Use the tables in Sec. 141.74(b)(3)(v) to determine the appropriate CT99.9 value. Calculate the total inactivation ratio as follows, and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*:

\* \* \* \* \*

Sec. 141.551 [Amended]

- 20. Section 141.551 is amended as follows:
  - a. In paragraph (a)(2) remove ``no'' and add in its place ``not''; and

- b. In paragraph (b)(2) remove ``Alternative'' and add in its place ``Alternative Filtration''.

Sec. 141.563 [Amended]

- 21. Section 141.563 is amended as follows:
  - a. In paragraph (b) remove the last sentence in the second column of the table, and

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- b. In paragraph (c) remove ``BTU'' and add in its place ``NTU'' in the first column of the table.
- 22. In Sec. 141.570, revise paragraph (b)(2) in the table to read as follows:

Sec. 141.570 What does subpart T require that my system report to the State?

\* \* \* \* \*

Corresponding requirement	Description of information to report	Frequency
(b) Individual Filter Turbidity Requirements (Sec. 141.560-141.564).	(2) The filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month, and the cause (if known) for the exceedance(s), but only if 2 consecutive measurements exceeded 1.0 NTU.	By the 10th of the following month.

PART 142--NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

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

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

Sec. 142.14 [Amended]

- 24. Section Sec. 142.14 is amended as follows:
  - a. In paragraph (d)(12)(iv) remove the citation ``Sec. 142.16(f)(2)'' and add in its place ``Sec. 142.16(h)(2)''; and

- b. In paragraph (d)(13) remove the citation ``Sec. 142.16(f)(5)'' and add in its place ``Sec. 142.16(h)(5)''.

Sec. 142.16 [Amended]

- 25. Section 142.16 is amended as follows:
  - a. In paragraph (l)(2) remove the citation ``Sec. 142.16(e)(5)'' and add in its place ``Sec. 142.16(e)(2)'';
  - b. Add and reserve paragraphs (m), (n), and (o);
  - c. Redesignate paragraph (j) which was added on January 14, 2002, at [67 FR 1812](#) as paragraph (p); and
  - d. In newly designated paragraph (p)(2)(ii) remove the citation ``141.536'' and add in its place ``141.535''.

Sec. 142.62 [Amended]

- 26. Section 142.62(g)(2) is amended by removing the citation ``103.35'' and add in its place ``165.110''.

[FR Doc. 04-14604 Filed 6-28-04; 8:45 am]

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