

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[WH-FRL-6970-3]

RIN 2040-AB75

National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes a nine-month delay to February 22, 2002 of the current May 22, 2001 effective date of the arsenic standard. This standard was promulgated by the Agency on January 22, 2001 (66 FR 6976), and previously delayed on March 23, 2001 (66 FR 16134) to May 22, 2001. On January 22, 2001, the U.S. Environmental Protection Agency (EPA) published a final standard for arsenic in drinking water that would lower the current arsenic standard from 50 parts per billion (ppb) to 10 ppb by 2006. On January 24, 2001, the **Federal Register** published the White House's regulatory review plan to allow members of the new administration a 60-day opportunity to review published regulations that have not taken effect.

Following **Federal Register** promulgation of the arsenic rule, a number of concerns were raised to EPA by states, public water systems, and other stakeholders regarding the adequacy of science and the basis for national cost estimates underlying the rule. Because of the importance of the arsenic rule and the national debate surrounding it related to science and costs, EPA's Administrator publicly announced on March 20, 2001, that the Agency would take additional steps to reassess the scientific and cost issues associated with this rule and seek further public input on each of these important issues.

Consistent with this commitment, EPA will request the National Academy of Sciences to convene a panel of scientific experts first, to review, the Agency's interpretation and application of arsenic research discussed and evaluated as part of the National Academy of Sciences 1999 arsenic report and, second, to review and evaluate any new arsenic research that has become available since the 1999 NAS report. At the same time, EPA will work with the National Drinking Water Advisory Council to review the assumptions and methodologies

underlying the Agency's estimate of arsenic compliance costs.

As its next step in this process of reviewing the January 22, 2001 arsenic rule, EPA will prepare a proposal for comment on a range of arsenic MCL options from 3ppb to 20ppb.

The nine-month extension of the effective date from May 22, 2001, to February 22, 2002, for which EPA today requests comment would allow time to complete the reassessment process outlined above and to afford the public a full opportunity to provide further input on the science and costing analysis underlying EPA's promulgation of the January 22, 2001, arsenic standard.

DATES: Written comments should be submitted on this proposed regulation by May 7, 2001 to the address listed below.

ADDRESSES: You may send written comments on this proposed rule to the W-99-6-IV Arsenic Comments Clerk, Water Docket (MC-4101); U.S. Environmental Protection Agency; 1200 Pennsylvania Ave., NW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW; EB-57; Washington, DC 20460; (202) 260-3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday. Comments may be submitted electronically to ow-docket@epamail.epa.gov. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing and docket review. The proposed rule and supporting documents, including public comments, are available for review in the Water Docket at the above address.

FOR FURTHER INFORMATION CONTACT: For information about today's proposal, contact Ephraim King, Director, Standards and Risk Management Division, Office of Ground Water and Drinking Water (4601), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, phone: (202) 260-7575.

SUPPLEMENTARY INFORMATION: *Additional Information for Commenters.* Please submit an original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that comments cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue

discussed. Electronic comments must be submitted as a WordPerfect 5.1, WP6.1 or WP8 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in WP 5.1, WP6.1 or WP8, or ASCII file format. Electronic comments on this Notice may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) or submissions in other electronic formats (e.g., Word, pdf, Excel) will be accepted.

Availability of Docket. The docket for this rulemaking has been established under number W-99-16-IV, and includes supporting documentation as well as printed, paper versions of electronic comments. The docket is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket; EB 57; U.S. EPA; 401 M Street, SW; Washington, D.C. For access to docket materials, please call (202) 260-3027 to schedule an appointment. Every user is entitled to 100 free pages, and after that the Docket charges 15 cents a page. Users are invoiced after they copy \$25, which is 267 photocopied pages. The Safe Drinking Water Hotline can provide copies of some of the supporting documentation electronically, phone: (800) 426-4791, or (703) 285-1093, e-mail: Hotline-sdwa@epa.gov. EPA's arsenic in drinking water web page contains links to the proposed and final arsenic regulations and other supporting material on line at <http://www.epa.gov/safewater/arsenic.html>.

Regulated Entities

A public water system, as defined in 40 CFR 141.2, provides water to the public for human consumption through pipes or 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." A public water system is either a community water system (CWS) or a non-community water system (NCWS). A community water system, as defined in § 141.2, is "a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents." The definition in § 141.2 for a non-transient, non-community water system [NTNCWS] is "a public water system that is not a [CWS] and that regularly serves at least 25 of the same persons over 6 months per year." EPA has an

inventory totaling over 54,000 community water systems and approximately 20,000 non-transient, non-community water systems nationwide. Entities potentially regulated by this action are community water systems and non-transient, non-community water systems. The following table provides examples of the regulated entities under this rule.

TABLE OF REGULATED ENTITIES

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

The 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 this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.11 and 141.62 as revised by the January arsenic rule.

Table of Contents

- I. Background and History Preceding This Notice
 - A. What is covered in the January 22, 2001 National Primary Drinking Water Regulations Final Rule?
 - B. What did EPA's Administrator announce on March 23, 2001?
 - C. What does today's action do?
- II. Basis for Today's Notice and Process for Review of Rule
 - A. Why is EPA undertaking a further review of the arsenic in drinking water rule?
 - B. What will be the process for review of the rule?
- III. Administrative Requirements

- A. Executive Order 12866, Regulatory Planning and Review
- B. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- C. Unfunded Mandates Reform Act (UMRA) of 1995
- D. Paperwork Reduction Act
- E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.
- F. National Technology Transfer and Advancement Act
- G. Executive Order 13132, Federalism
- H. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)
- I. Executive Order 12866—Plain Language Considerations

I. Background and History Preceding This Notice

A. What is Covered in the January 22, 2001 National Primary Drinking Water Regulations Final Rule?

In the Monday, January 22, 2001, **Federal Register**, EPA issued final regulations for arsenic and clarifications to compliance and new-source contaminants monitoring (66 FR 6976). The Agency established a health-based, non-enforceable Maximum Contaminant Level Goal (MCLG) for arsenic of zero milligrams per liter (mg/L) and an enforceable Maximum Contaminant Level (MCL) for arsenic of 0.01 mg/L (i.e., 10 micrograms per liter (µg/L)). The arsenic regulation was intended to apply to non-transient non-community water systems and to community water systems.

In addition, on January 22, 2001, EPA published clarifications for monitoring and demonstration of compliance for new systems or sources of drinking water for inorganic, volatile organic, and synthetic organic contaminants. The regulations also recognized the State-specified time period and sampling frequency for new public water systems and systems using a new source of water for demonstrating compliance with drinking water regulations. The effective date for the new rule was, in general, March 23, 2001, although the compliance dates for affected systems are years away.

B. What did EPA's Administrator Announce on March 23, 2001?

On March 23, 2001 (66 FR 16134), the Administrator announced a 60-day delay of the effective date for the arsenic rule from March 23, 2001 to May 22, 2001. That extension was in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal**

Register on January 24, 2001 (66 FR 7702).

C. What Does Today's Action do?

Today, EPA is proposing a further extension of the effective date for the arsenic rule, until February 22, 2002, to allow additional time for reconsideration of specific aspects of the arsenic rule as explained in the next section. EPA will consider comments received during the comment period for this notice which address the extension, and EPA will decide whether to issue a final extension of the effective date by May 22, 2001. The compliance dates for the arsenic rule remain unaffected by today's action.

II. Basis for Today's Notice and Process for Review of Rule

A. Why is EPA Undertaking a Further Review of the Arsenic in Drinking Water Rule?

The purpose of today's proposed extension to the effective date is to allow additional time for review of the science and costing analysis underlying the arsenic in drinking water rule. EPA understands and appreciates that the question of setting a final arsenic in drinking water standard is a controversial one for several reasons. From an economic standpoint, the new regulation can be expected to have significant impacts on a number of drinking water utilities, especially those serving less than 10,000 people in areas of high naturally occurring arsenic. Stakeholders have an understandable desire to ensure that any new regulation be based on accurate and reliable compliance cost estimates. Stakeholders also want to be confident that the health risks associated with a new standard have been appropriately evaluated and are based on the best available science.

The Agency is committed to safe and affordable drinking water for all Americans. However, we want to be sure that the conclusions about arsenic in the final rule are supported by the best available science. The Agency is therefore moving rapidly to review arsenic research and cost estimates related to the arsenic standard so that communities that need to reduce arsenic in drinking water can proceed with confidence that the new standard is based on sound science and accurate cost estimates. Independent review of the science and technical analysis behind the final standard will help resolve questions that have arisen about the health basis and costs of reducing arsenic to 10 parts per billion in drinking water.

B. What Will be the Process for Review of the Rule?

EPA has considered a number of possible mechanisms for conducting the necessary reviews of the underlying science and cost of compliance estimates associated with the arsenic in drinking water rule. EPA's criteria for conducting the review will be to ensure that reviewers are recognized experts in their fields; that reviewers are as impartial and objective as possible; that reviewers represent an array of backgrounds and perspectives (within their disciplines); that the review can be conducted within a relatively short time frame (i.e., within approximately four months); and that the results of the review be made publicly available for comment. EPA is using the following mechanisms for the review:

- Review of Health Effects of Arsenic and Consideration of Key Issues Associated with the Risk Analysis: National Academy of Sciences' National Research Council.

- Review of Cost of Compliance Estimates: Specially convened subgroup of the National Drinking Water Advisory Council.

In the case of the National Research Council, EPA will rely on the same independent judgment, objective analysis, and scientific expertise that is reflected in the March 1999 report, entitled, "Arsenic in Drinking Water" in reviewing the Agency's interpretation and application of existing arsenic research as well as new studies of arsenic health effects arsenic science that have been published since the 1999 report. With regard to costing issues, the National Drinking Water Advisory Council has a charter, under the Federal Advisory Committee Act, to advise the Agency on an array of drinking water issues associated with implementing the national drinking water program and has previously provided recommendations to the Agency in the development of the arsenic in drinking water rule.

As its next step in the process for review of the arsenic MCL, EPA will prepare a proposal requesting comment on a range of arsenic MCLs from 3ppb to 20ppb. The purpose of this further proposal is to provide for additional public comment on the range of science and cost issues related to the arsenic rule. EPA will provide the results of the independent science and cost reviews as they become available. EPA will then analyze the results of these reviews together with any public comment to reach a final decision on how to proceed with regard to the arsenic MCL. As it becomes available, further information

on this process will also be available on EPA's arsenic in drinking water webpage at www.epa.gov/safewater/arsenic.html and from the Safe Drinking Water Hotline phone: (800) 426-4791, or (703) 285-1093, e-mail: Hotline-sdwa@epa.gov.

III. Administrative Requirements

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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" and, as such, has not been submitted to OMB for review.

B. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62FR19885, 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 regulation is not subject to Executive Order 13045 because it not economically significant.

C. Unfunded Mandates Reform Act (UMRA) of 1995

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 is because the rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus today's proposal is not subject to the requirements of section 202 and 205 of the UMRA. For the same reason, EPA also has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any requirement on anyone. Thus, there are no costs associated with this action. Therefore, today's rule is not

subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This proposed action does not impose any requirements on anyone and does not voluntarily request information. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR parts 9, 141 and 142 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040-0231.

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>. Include the ICR and/or OMB number in any correspondence.

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 are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking 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 governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It 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 USC 601(3)-(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's Chief of Counsel for Advocacy.

For the purposes of assessing the impacts of today's rule on all three categories of small entities, EPA considered small entities to be systems serving 10,000 or fewer customers. In accordance with the RFA requirements, EPA proposed using this alternative definition for all three categories of small entities in the **Federal Register** (63 FR 7605, February 13, 1998), requested public comment and consulted with SBA regarding the alternative definition as it relates to small businesses. In the preamble to the final Consumer Confidence Reports (CCR) regulation (63 FR 4511, August 19, 1998), EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it in this proposed rulemaking.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed action does not impose any requirements on anyone, including small entities.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law. No. 104-113, section 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 proposed rulemaking does not impose any new technical standards.

G. 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 proposed 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. This rule does not establish or change any requirements. Thus, Executive Order 13132 does not apply to this 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 solicits comment on this proposed rule from State and local officials.

H. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 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 proposed 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. As a result of administrative review of the final regulation published on January 22, 2001, the Environmental Protection Agency (EPA) is delaying the effective date for the drinking water regulation for arsenic. The purpose is to reassess the scientific and cost issues and seek further public input, as well as to fully review the support available for small systems. This proposal merely allows people to comment on EPA's intent to review the final arsenic regulation. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

I. Executive Order 12866—Plain Language Considerations

Executive Order 12866 requires each agency to write all rules in plain language. EPA invites public comment on how to make this proposed rule easier to understand. Comments may address the following questions and other factors as well:

- A. Has EPA organized the material to suit your needs?
- B. Are the requirements in the rule clearly stated?
- C. Does the rule contain technical wording or jargon that is not clear?
- D. Would a different format (grouping or order of sections, use of headings, paragraphing) make the rule easier to understand?
- E. Would more (but shorter) sections be better?
- F. Could EPA improve clarity by using additional tables, lists or diagrams?
- G. What else could EPA do to make the rule easier to understand?

List of Subjects in 40 CFR Part 141

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

Dated: April 18, 2001.

Christine Todd Whitman,
Administrator.

PARTS 9, 141, AND 142—PROPOSED DELAY OF EFFECTIVE DATE

For the reasons stated in the preamble, EPA proposes:

- 1. To delay the effective date of the amendments to 40 CFR parts 9, 141, and 142 published January 22, 2001 (66 FR 6976) and delayed on March 23, 2001 (66 FR 16134) from May 22, 2001 to February 22, 2002 except for the

amendments to §§ 141.23(i)(1) and (i)(2), 141.24(f)(15), (h)(11) and (h)(20), 142.16(e), (j), and (k) which are effective January 22, 2004;

2. To withdraw the amendments to 40 CFR 141.6 published on March 23, 2001 (66 FR 16134); and

3. To amend 40 CFR part 141 as follows:

PART 141— NATIONAL PRIMARY DRINKING WATER REGULATIONS

a. 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.

Subpart A—[Amended]

b. Paragraph (j) of 40 CFR 141.6 added at 66 FR 7061, January 22, 2001, and amended on March 23, 2001, is further amended by revising the last sentence to read as follows:

§ 141.6 Effective dates.

* * * * *

(j) * * * However, the consumer confidence rule reporting requirements relating to arsenic listed in § 141.154(b) and (f) are effective for the purpose of compliance on February 22, 2002.

* * * * *

[FR Doc. 01-10110 Filed 4-19-01; 3:10 pm]

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