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- *Mail*: Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery*: Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Laurel Dygowski, EPA Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129; (303) 312-6144; [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov).

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: March 27, 2008.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

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**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 147**

[EPA-R09-OW-2007-0248; FRL-8556-9]

**Navajo Nation; Underground Injection Control (UIC) Program; Proposed Primacy Approval and Minor Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve an application from the Navajo Nation ("Tribe") under Section 1425 of the Safe Drinking Water Act (SDWA) for primary enforcement responsibility (or "primacy") for the underground

injection control (UIC) program for Class II (oil and gas-related) injection wells located: within the exterior boundaries of the formal Navajo Reservation, including the three satellite reservations (Alamo, Canoncito and Ramah), but excluding the former Bennett Freeze Area, the Four Corners Power Plant and the Navajo Generating Station; and on Navajo Nation tribal trust and allotted lands outside the exterior boundaries of the formal Navajo Reservation. (These areas are collectively referred to hereinafter as "areas covered by the Tribe's Primacy Application.") EPA would continue to administer its SDWA UIC program for any Class I, III, IV, and V wells on Navajo Indian lands (defined as Indian country in EPA UIC regulations; see definition of "Indian lands"). EPA is also proposing minor revisions to regulations that are not specific to the Navajo Nation's application. EPA requests public comment on this proposed rule, the Navajo Nation's application, and EPA's supporting documentation, and will consider all comments received within the public comment period before taking final action.

**DATES:** The public may submit written comments to the EPA through the end of the comment period on May 27, 2008. EPA will schedule a public hearing, unless insufficient interest is expressed during the public comment period. Any such public hearing will be held no earlier than 30 days after EPA provides notice of the hearing.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OW-2007-0248, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

- *E-mail*: [rao.kate@epa.gov](mailto:rao.kate@epa.gov)

- *Fax*: 415-947-3549

- *Mail*: Environmental Protection Agency, Ground Water Office (WTR-9), 75 Hawthorne Street, San Francisco, CA 94105-3920

- *Hand Delivery*: Deliver your comments to Kate Rao, Environmental Protection Agency, Ground Water Office (WTR-9), 75 Hawthorne Street, San Francisco, CA 94105-3920, Attention Docket ID No. EPA-R09-OW-2007-0248. Such deliveries are only accepted during the Docket's normal hours of operation: Monday through Friday, between 8:00 am and 4:00 p.m., Pacific time, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R09-OW-2007-0248. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

[www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through [www.regulations.gov](http://www.regulations.gov) or e-mail that you consider to be CBI or otherwise protected by statute. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the docket index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, Ground Water Office (WTR-9), 75 Hawthorne Street, San Francisco, CA 94105-3920. This Docket Facility is open Monday through Friday, between 8:00 am and 4:00 p.m., Pacific time excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kate Rao, U.S. Environmental Protection Agency, Ground Water Office (WTR-9), 75 Hawthorne Street, San Francisco, CA 94105-3920. Phone number: 415-972-3533. E-mail: [rao.kate@epa.gov](mailto:rao.kate@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Regulated Entities*

Category	Examples of potentially regulated entities	North American Industry Classification System
State, Local, and Tribal Governments .....	State, local, and tribal governments that own and operate Class II injection wells in the areas covered by the Tribe's Primacy Application.	924110
Industry .....	Private owners and operators of Class II injection wells in the areas covered by the Tribe's Primacy Application.	221310
Municipalities .....	Municipal owners and operators of Class II injection wells in the areas covered by the Tribe's Primacy Application.	924110

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 be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. 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.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit CBI to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and provide substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**II. Introduction**

The Navajo Nation has applied to the EPA under Section 1425 of the SDWA, 42 U.S.C. Section 300h-4, for primary enforcement responsibility for the SDWA Class II (oil and gas-related) UIC program in the areas covered by the Tribe's Primacy Application. EPA's proposal is based on a careful and extensive legal and technical review of the Tribe's application. As a result of this review, EPA is issuing a proposed determination that the Tribe meets all requirements of Section 1451 of the SDWA, including the requirement that the Tribe demonstrate adequate jurisdictional authority over all Class II injection activities in the areas covered by the Tribe's Primacy Application, including those activities conducted by nonmembers. EPA has also determined that the Tribe's program meets all applicable requirements for approval under SDWA Section 1425, and that the Tribe is capable of administering an effective Class II UIC program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations.

**III. Legal Authorities**

These regulations are being proposed under authority of Sections 1422, 1425, 1450 and 1451 of the SDWA, 42 U.S.C. 300h-1, 300h-4, 300j-9 and 300j-11.

*A. Requirements for State UIC Programs*

Section 1421 of the SDWA requires the Administrator of EPA to promulgate minimum requirements for effective State UIC programs to prevent underground injection activities that endanger underground sources of drinking water (USDWs). Sections 1422 and 1425 of the SDWA establish

requirements for States seeking EPA approval of State UIC programs.

For States that seek primacy for UIC programs under Section 1422 of the SDWA, EPA has promulgated regulations setting forth the applicable procedures and substantive requirements. These regulations are codified in the Code of Federal Regulations (40 CFR part 145). They include requirements for State permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

Section 1425 of the SDWA describes alternative requirements for States to obtain primacy for UIC programs that relate solely to Class II wells. Section 1425 allows a State, in lieu of the showing required under SDWA Section 1422(b)(1)(A), to demonstrate that its proposed Class II UIC program meets the minimum requirements of SDWA Sections 1421(b)(1)(A)-(D), and represents an "effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources." EPA published interim guidance entitled "Guidance for State Submissions Under Section 1425 of the Safe Drinking Water Act, Ground Water Program Guidance #19" (Guidance 19) in the **Federal Register** (46 FR 27333-27339, May 19, 1981) which sets forth the criteria EPA generally considers in evaluating applications under SDWA Section 1425.

*B. Tribal UIC Programs—Tribal Eligibility Requirements*

Section 1451 of the SDWA and 40 CFR 145.52 authorize the Administrator of EPA to treat an Indian Tribe in the same manner as a State for purposes of delegating primary enforcement responsibility for the UIC program if the Tribe demonstrates that: (1) It is recognized by the Secretary of the Interior; (2) it has a governing body carrying out substantial governmental duties and powers over a defined area; (3) the functions to be exercised by the Tribe are within an area of the tribal

government's jurisdiction; and (4) the Tribe is reasonably expected to be capable, in the EPA Administrator's judgment, of implementing a program consistent with the terms and purposes of the SDWA and applicable regulations.

Tribes may apply for primacy under either or both Sections 1422 and 1425 of the SDWA, and the references in 40 CFR part 145 and the EPA's May 19, 1981 interim guidance to "State" programs are also construed to include eligible "tribal" programs. (See also 40 CFR Section 145.1(h), which provides that all requirements of parts 124, 144, 145, and 146 that apply to States with UIC primacy also apply to Indian Tribes except where specifically noted.)

#### IV. The Navajo Nation's Application

##### A. Background

On October 18, 2001, the Navajo Nation submitted an initial application for primacy for its UIC program for Class II wells. On January 30, 2002, the EPA notified the Navajo Nation that its application required revision, clarification and additional documentation. The Tribe has provided various supplemental application materials to EPA. In February 2004, the Navajo Nation sent EPA a letter clarifying that it was requesting primacy under Section 1425 of the SDWA. The Tribe amended its underground injection control regulations, and, in 2006, submitted the final outstanding components of its primacy application to EPA. Subsequently, in 2007, as an addendum to its primacy application, the Tribe submitted several Navajo Nation Class II UIC permits that it had issued pursuant to its authority under tribal laws and regulations. The materials described above are collectively referred to hereinafter as the Tribe's "Primacy Application," and are described in detail in EPA's Proposed Decision Document for this action.

##### B. Public Comments Received by the Navajo Nation

Pursuant to 40 CFR Section 145.31, on August 16, 2001, the Navajo Nation published a public notice of its intent to apply for primacy for the UIC program for Class II wells in both the Farmington Daily Times and the Navajo Times and, on September 17, 2001, the Tribe held a public hearing in Shiprock, New Mexico. The Tribe received two requests for copies of its primacy application and received one comment.

The one comment received was from the Arizona Public Service (APS) Company, which stated that the Navajo Nation's assertion of jurisdiction in the

primacy application did not contain any exclusion for the Four Corners Power Plant. APS requested that the jurisdictional statement be revised to clarify that the Navajo Nation is not intending to address or resolve in its UIC primacy application the question of whether the Tribe may regulate any aspect of operations at the Four Corners Power Plant. The Navajo Nation agreed with the comment and added the following phrase to the jurisdictional statement: *The Navajo Nation also requests EPA to refrain from making a jurisdictional finding regarding the Four Corners Power Plant and the Navajo Generating Station, since the Navajo Nation and the owners and operators of the power plants are in the middle of negotiations to address jurisdictional issues regarding the plants.* EPA believes that this revision to the jurisdictional statement fully addresses the comment received. Because the Tribe has requested that EPA exclude these two facilities from its determination at this time, EPA is not proposing to make a jurisdictional finding with respect to these two facilities at this time, and EPA will continue to administer the Class II UIC program for these two facilities as it does for other areas for which it retains primacy for the Class II program.

Additionally in July 2006, the Navajo Nation ran a public notice in the Farmington Daily Times and on the Navajo/English radio station announcing its proposed revisions to the Navajo Nation Class II UIC Regulations. No comments were received.

#### V. EPA's Proposed Action

##### A. Overview of EPA's Proposed Action

EPA is proposing to approve the Navajo Nation's application for primacy for the SDWA Class II UIC program in the areas covered by the Tribe's Primacy Application. If EPA approves the Navajo Nation's application, the Navajo Nation would assume primary enforcement authority for regulating all Class II injection activities in the areas covered by the Tribe's Primacy Application. Indian Tribes are precluded under Federal Indian law, however, from pursuing criminal enforcement as follows: (1) Against non-Indians; and (2) against Indians where the potential fine required is greater than \$5,000 or where the penalty would require imprisonment for more than one year (in accordance with 25 U.S.C. Section 1302). For this reason, EPA has entered into a Criminal Enforcement Memorandum of Agreement with the Tribe (signed by EPA on October 30,

2006) whereby the Tribe will notify EPA of potential criminal violations of its SDWA Class II UIC program. See 40 CFR 145.13(e).

EPA has prepared a Proposed Decision Document in support of its action. This document is part of the public record and is now available for public review and comment. The Proposed Decision Document includes findings that the Navajo Nation meets all eligibility requirements of Section 1451 of the SDWA and its implementing regulations at 40 CFR part 145, Subpart E. The Proposed Decision Document also finds that the Navajo Nation's Class II UIC program meets all applicable requirements for approval under Section 1425 of the SDWA.

If approved as proposed, the Navajo Nation would administer and enforce its Class II UIC program with respect to all Class II injection wells in the areas covered by the Tribe's Primacy Application. Upon approving the Navajo Nation's Class II program, EPA would amend 40 CFR part 147 as proposed in this notice to revise the references to the EPA-administered program for Class II injection wells in the areas covered by the Tribe's Primacy Application to refer to the Navajo Nation's Class II UIC program. EPA would continue to administer its SDWA UIC program for any Class I, III, IV, and V wells on Navajo Indian lands (defined as Indian country in EPA UIC regulations; see definition of "Indian lands" at 40 CFR 144.3). (Although the Navajo Nation UIC Regulations prohibit injection in Class I and IV wells, these prohibitions are separate from, and not within the scope of, the Class II UIC program for which EPA today proposes to approve the Tribe's application for primacy.) As noted above, EPA also maintains criminal enforcement authority for violations of Class II UIC requirements, including violations by non-Indians on Navajo Indian lands, and by Indians on Navajo Indian lands where the potential fine required is greater than \$5,000 or where the penalty would require imprisonment for more than one year.

EPA would oversee the Navajo Nation's administration of the SDWA Class II UIC program in the areas covered by the Tribe's Primacy Application. Part of EPA's oversight responsibility would include requiring quarterly reports of non-compliance and annual UIC program performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the Navajo Nation (signed by EPA on August 21, 2001) provides EPA with the opportunity to review and

comment on all permits and, where applicable, object.

#### B. Permit Transfer

As part of this proposed program approval, EPA evaluated the existing Federal and Tribal UIC Class II permitting matrix in the areas covered by the Tribe's Primacy Application, which can be summarized into four categories: (1) Wells with both Navajo Nation- and EPA-issued permits; (2) wells with EPA-issued permits only; (3) wells with Navajo Nation-issued permits only (Federally authorized by rule); and (4) wells without permits (authorized by rule). Below is a discussion on how each category of wells would be affected if EPA were to grant primacy to the Navajo Nation for its SDWA Class II UIC program.

*Wells with both Navajo Nation- and EPA-issued permits:* The Navajo Nation UIC Program has issued 18 Navajo Nation UIC permits to date for Class II UIC wells pursuant to its authority under Tribal laws and regulations. A number of these facilities are also subject to EPA-issued Class II UIC permits. EPA conducted a thorough review of each of the existing Navajo Nation-issued UIC permits and verified that each meets the substantive permitting requirements of the Navajo Nation's proposed program and that those requirements are at least as stringent as Federal permitting requirements. EPA also confirmed that each of the Navajo Nation's permits was issued pursuant to the Tribe's procedural regulations for permit issuance and that those procedural regulations are at least as stringent as the provisions of 40 CFR part 124. EPA considers these Navajo Nation-issued permits to be part of the existing Navajo Nation UIC program for which the Navajo Nation is seeking primacy. EPA is proposing that, after authorization of primacy, the pre-existing Navajo Nation-issued UIC permits would remain in effect as the federally-enforceable UIC permits under the SDWA. Descriptions of the 18 permits are available for review and comment in the Decision Document, Appendix B, which can be accessed in EPA's Docket No. EPA-R09-OW-2007-0248.

In contrast, the EPA-issued permits include provisions stating that the permits "will expire upon authorization of primary enforcement responsibility" to the Navajo Nation, unless the Navajo Nation "has the appropriate authority and chooses to adopt and enforce this permit as a Tribal permit." Although the Navajo Nation has this authority, it has not chosen to adopt and enforce EPA-issued permits for wells which the

Navajo Nation has also permitted. Thus, the EPA-issued permits for wells in this category would expire upon authorization of primacy.

*EPA-issued permits only:* Pursuant to its authority, the Navajo Nation chose to adopt and enforce these EPA-issued permits as Tribal permits. The Navajo Nation would administer EPA's permits for wells in this category until Navajo Nation UIC permits are issued.

*Navajo Nation-issued permits only:* As with the wells with both Navajo Nation- and EPA-issued permits, these pre-existing Tribal UIC permits would remain in effect as the Federally-enforceable UIC permits under the SDWA.

*Wells not currently permitted by EPA or the Tribe:* These wells are currently authorized to operate by rule. The Navajo Nation, in its UIC Regulations, has adopted by reference the Federal authorization by rule regulations that will apply until the Tribe issues UIC permits for these wells. After the authorization of primacy to the Navajo Nation, these wells would continue to operate by rule authorization. A more in-depth discussion of the proposed permit transfer process is contained in the Proposed Decision Document available in the EPA docket.

#### C. EPA's Proposed Findings Regarding Tribal Eligibility

Under Section 1451 of SDWA and 40 CFR part 145, Subpart E, EPA is authorized to treat Indian Tribes similarly to States and may approve a Tribe's application for primary enforcement authority for the UIC Program. EPA's proposed decision to approve the Navajo Nation's application for primacy for the Class II UIC program incorporates findings that the Tribe meets all the requirements of Section 1451 of the SDWA, including the proposed finding that the Tribe has demonstrated adequate jurisdictional authority over all Class II injection activities in the areas covered by the Tribe's Primacy Application. EPA's Proposed Decision Document describes in detail EPA's analysis supporting its findings and decision.

#### D. EPA's Determination Regarding SDWA Section 1425 and Guidance 19

As described above, the Navajo Nation has requested primacy for the Class II UIC program authorized under Section 1425 of the SDWA, which allows States and eligible Tribes, in lieu of the showing required under SDWA Section 1422(b)(1)(A), to demonstrate that their Class II UIC programs meet the requirements of SDWA Sections 1421(b)(1)(A)-(D), and represent an

"effective program [including adequate recordkeeping and reporting] to prevent underground injection which endangers drinking water sources." EPA has evaluated the Tribe's SDWA Section 1425 primacy application pursuant to the criteria in Guidance 19 (see discussion of Guidance 19 in Section III.A).

As explained in detail in EPA's Proposed Decision Document, EPA has determined that the Navajo Nation's SDWA Class II UIC program meets the requirements of SDWA Section 1425 and represents an effective program to prevent underground injection which endangers drinking water sources. The Tribe's program is "effective" as that term is discussed in Guidance 19, and has many of the same (or somewhat more stringent) components as the Federal UIC regulations at 40 CFR parts 124, 144, 145, 146 and 147. In addition, Navajo Nation UIC program personnel currently issue UIC permits which are reviewed by EPA staff, support EPA annual reporting, participate in enforcement actions, and conduct various inspections for verification of compliance with UIC requirements. In sum, EPA believes that the Navajo Nation's Primacy Application and the Tribe's current administration of the Navajo Nation Class II UIC program demonstrates that the Tribe has the legal authority, as well as the technical and administrative capacity, to administer an effective UIC Program that prevents underground injection from endangering drinking water sources, consistent with the requirements of SDWA Section 1425.

#### VI. Generalized Findings

As described earlier, EPA's proposed decision to approve the Navajo Nation to implement a Class II UIC program includes findings that the Tribe meets all requirements of Section 1451 of the SDWA, including that the Tribe has demonstrated adequate jurisdictional authority over all Class II injection activities in the areas covered by the Tribe's Primacy Application, including those conducted by nonmembers. With regard to authority over nonmember activities on nonmember-owned fee lands, EPA is proposing to find that the Tribe has demonstrated such authority under the test established by the United States Supreme Court in *Montana v. United States*, 450 U.S. 544 (1981) (*Montana test*). Under the *Montana test*, the Supreme Court held that absent a Federal grant of authority, Tribes generally lack inherent jurisdiction over the activities of nonmembers on nonmember-owned fee lands. However, the Court also found that Indian Tribes

retain inherent sovereign power to exercise civil jurisdiction over nonmember activities on nonmember-owned fee lands within the reservation where: (1) Nonmembers enter into "consensual relationships with the Tribe or its members, through commercial dealing, contracts, leases, or other arrangements" or (2) "\* \* \* [nonmember] conduct threatens or has some direct effect on the political integrity, the economic security or the health or welfare of the Tribe." *Id.* at 565–66. In analyzing Tribal assertions of inherent authority over nonmember activities on Indian reservations, the Supreme Court has reiterated that the *Montana* test remains the relevant standard. See, e.g., *Strate v. A-1 Contractors*, 520 U.S. 438, 445 (1997) (describing *Montana* as "the pathmarking case concerning Tribal civil authority over nonmembers"); *Nevada v. Hicks*, 533 U.S. 353, 358 (2001) ("Indian Tribes" regulatory authority over nonmembers is governed by the principles set forth in [*Montana*]").

As part of the public record available for review and comment in EPA's Docket, EPA's Proposed Decision Document, and Appendix A thereto, sets forth the Agency's specific factual findings relating to the Tribe's demonstration of inherent authority over the UIC Class II activities of nonmembers under the *Montana* test and, in particular, the potential for direct effects of nonmember UIC activities on the Tribe's health, welfare, political integrity, and economic security. In addition, EPA is proposing the general findings set forth below regarding the effects of underground injection activities. These general findings provide a foundation for EPA's analysis of the Tribe's assertion of authority under the *Montana* test and, in effect, supplement the Agency's factual findings specific to the Tribe and to the areas covered by the Tribe's Primacy Application.

#### A. General Finding on Political, Economic and Human Health and Welfare Impacts

In enacting part C of the SDWA, Congress generally recognized that if left unregulated or improperly managed, underground injection wells have the potential to cause serious and substantial, harmful impacts on political and economic interests and human health and welfare. Specifically, as stated in legislative history of the SDWA:

[U]nderground injection of contaminants is clearly an increasing problem. Municipalities are increasingly engaging in underground

injection of sewage, sludge, and other wastes. Industries are injecting chemicals, byproducts, and wastes. Energy production companies are using injection techniques to increase production and to dispose of unwanted brines brought to the surface during production. Even government agencies, including the military, are getting rid of difficult to manage waste problems by underground disposal methods. Part C is intended to deal with all of the foregoing situations insofar as they may endanger underground sources of drinking water (USDWs).<sup>1</sup>

In response to the problem of the substantial risks inherent in underground injection activities, Congress enacted Section 1421 of the SDWA "to assure that drinking water sources, actual and potential, are not rendered unfit for such use by underground injection of contaminants."<sup>2</sup>

In enacting part C of the SDWA, Congress more specifically found that mismanaged underground injection activities could have serious and substantial, harmful impacts on the public's economic and political interests, as well as its health and welfare. For example, Congress found that:

Federal air and water pollution control legislation have increased the pressure to dispose of waste materials on or below land, frequently in ways, such as subsurface injection, which endanger drinking water quality. Moreover, the national economy may be expected to be harmed by unhealthy drinking water and the illnesses which may result therefrom.<sup>3</sup>

Congress specifically noted several economic and political consequences that can result from the degradation of good quality drinking water supplies, including: (1) Inhibition of interstate tourism and travel; (2) loss of economic productivity because of absence from employment due to illness; (3) limited ability of a town or region to attract workers; and (4) impaired economic growth of a town or region, and, ultimately, the nation.<sup>4</sup>

As the Agency charged by Congress with implementing part C of the SDWA and assuring implementation of effective UIC programs throughout the United States, EPA agrees with these Congressional findings. EPA finds that underground injection activities, if not effectively regulated, can have serious and substantial, harmful impacts on

human health, welfare, economic, and political interests. In making this finding, EPA recognizes that: (1) The underground injection activities, currently regulated as five distinct classes of injection wells as defined in the UIC regulations, typically emplace a variety of potentially harmful organic and inorganic contaminants (e.g., brines and hazardous wastes) into the ground; (2) these injected contaminants have the potential to enter USDWs through a variety of migratory pathways if injection wells are not properly managed; and (3) once present in USDWs, these injected contaminants can have harmful impacts on human health and welfare, and political and economic interests, that are both serious and substantial.

In 1980, EPA issued a document entitled, "Underground Injection Control Regulations: Statement of Basis and Purpose," which provides the rationale for the Agency in proposing specific regulatory controls for a variety of underground injection activities. These controls, or technical requirements (e.g., testing to ensure the mechanical integrity of an injection well), were promulgated to prevent release of pollutants through the six primary "pathways of contamination," or well-established and recognized "ways in which fluids can escape the well or injection horizon and enter USDWs."<sup>5</sup> EPA has found that USDW contamination from one or more of these pathways can occur from underground injection activity of all classes (I–V) of injection wells.

The six pathways are:

1. Migration of fluids through a leak in the casing of an injection well and directly into a USDW;
2. Vertical migration of fluids through improperly abandoned and improperly completed wells in the vicinity of injection well operations;
3. Direct injection of fluids into or above a USDW;
4. Upward migration of fluids through the annulus, which is the space located between the injection well's casing and the well bore. This can occur if there is sufficient injection pressure to push such fluid into an overlying USDW;
5. Migration of fluids from an injection zone through the confining strata over or underlying a USDW. This can occur if there is sufficient injection pressure to push fluid through a stratum, which is either fractured or permeable, and into the adjacent USDW; and

<sup>1</sup> See H.R. Report No. 93–1185, 93rd Congress, 2nd Session (1974), reprinted in "A Legislative History of the Safe Drinking Water Act," February, 1982, by the Government Printing Office, Serial No. 97–9, page 561.

<sup>2</sup> *Id.*, page 560.

<sup>3</sup> *Id.*, page 540.

<sup>4</sup> *Id.*, page 540.

<sup>5</sup> "Underground Injection Control Regulations: Statement of Basis and Purpose," EPA, (May, 1980) page 7.

6. Lateral migration of fluids from within an injection zone into a portion of that stratum considered to be a USDW. In this scenario, there may be no impermeable layer or other barrier to prevent migration of such fluids.<sup>6</sup>

Moreover, consistent with EPA's findings, the U.S. Department of the Interior has recognized the ability of injection wells to contaminate surface waters that are hydrogeologically connected to contaminated ground water.<sup>7</sup> Such contamination of surface waters could further cause negative impacts on human health and welfare, and economic and political interests.

In sum, EPA finds that, given the common presence of contaminants in injected fluids, serious and substantial contamination of ground water and surface water resources can result from improperly regulated underground injection activities. Moreover, such contamination has the potential to cause correspondingly serious and substantial harm to human health and welfare, and political and economic interests. EPA also has determined that Congress reached a similar finding when it enacted part C of the SDWA, directing EPA to establish minimum requirements for effective UIC programs to mitigate and prevent such harm through the proper regulation of underground injection activities.

#### *B. General Finding on the Necessity of Protecting Safe Drinking Water Supplies as a Necessary Incident of Self-Government*

Consistent with the finding that improperly managed underground injection activities can have direct harmful effects on human health and welfare, and economic and political interests, EPA has determined that proper management of such activities serves the purpose of protecting these public health and welfare, and political and economic interests, which is a core governmental function whose exercise is integral to, and a necessary aspect of, self-government. See 56 FR 64876, 64879 (December 12, 1991); *Montana v. EPA*, 137 F.3d 1135, 1140–41 (9th Cir. 1998). EPA has determined that Congress reached this conclusion in enacting the SDWA and that Congress considered the water quality protection functions authorized by SDWA to be important governmental functions serving to protect essential and vital public interests by ensuring that the public's essential drinking water

supplies are safe from contamination, including contamination caused by underground injection activities.

The above findings regarding the effects on public health and welfare, and economic and political interests are generally true for human beings and their communities, wherever they may be located. EPA has determined that the above findings that underground injection regulation is an integral and necessary incident of self-government is generally true for any Federal, State and/or Tribal government having responsibility for protecting public health and welfare. With specific relevance to Tribes, EPA has long noted the relationship between proper environmental management within Indian country and Tribal self-government and self-sufficiency. Moreover, in the 1984 *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, EPA determined that as part of the "principle of Indian self-government," Tribal governments are the "appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace," consistent with Agency standards and regulations. (*EPA Policy for the Administration of Environmental Programs on Indian Reservations*, Paragraph 2, November 8, 1984).

EPA interprets Section 1451 of the SDWA, in providing for the approval of Tribal programs under the Act, as authorizing eligible Tribes to assume a primary role in protecting drinking water sources. These general findings provide a backdrop for EPA's legal analysis of the Navajo Tribe's Application and, in effect, supplement EPA's factual findings specific to the Navajo Tribe and the areas covered by the Tribe's Application contained in the Proposed Decision Document and Appendix A thereto, and the Tribe's similar conclusions, contained in its Application, pertaining specifically to the Navajo Tribe and areas covered by its Primacy Application.

### **VII. Statutory and Executive Order Reviews**

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

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

#### *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.* EPA has determined that there is no need for an Information Collection Request under the Paperwork Reduction Act for this action because this proposed rule would not impose any new Federal reporting or record-keeping requirements. Reporting or record-keeping requirements would be based on the Navajo Nation UIC Regulations, and the Navajo Nation is not subject to the Paperwork Reduction Act.

However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR § 144–148) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0042. 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 governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, a "small entity" is defined as: (1) A small business that is defined in the Small Business Administration's 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.

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. Under this proposed rule, entities operating existing Class II wells would be subject to requirements substantially similar to the existing requirements of the EPA's program under 40 CFR 147.3000, and will not

<sup>6</sup> *Id.*, pp. 7–17.

<sup>7</sup> See Federal Water Quality Administration's Order COM 5040.10 (1970), as referred to in H.R. Report No. 93–1185, 561.

incur significant new costs as a result of this proposed rule.

Nonetheless, EPA continues to be interested in any potential impacts of the proposed rule on small entities and welcomes comments on issues related to any such impacts.

#### *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 to 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 as to 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 proposed 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 because the rule imposes no enforceable duty on any State, local, or tribal governments or the private sector. EPA’s proposed approval of the Navajo Nation’s Class II UIC program would not constitute a “Federal mandate” because there is no requirement that Tribes establish UIC

regulatory programs, and because the program, if finally approved, would be a tribal, rather than a Federal program. Thus, today’s proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. 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 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.”

EPA has determined that 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. If finalized, the proposed rule would simply provide that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe would be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in Section V and in the Proposed Decision Document. The EPA will continue to administer the Federal Class I, III, IV, and V UIC programs on Navajo Indian lands. Authorizing the Navajo Nation as the primacy agency for the Class II UIC program in the areas covered by the Tribe’s Primacy Application will not substantially alter the distribution of power and responsibilities among levels of government or significantly change EPA’s relationship with the relevant States. The substitution of a Navajo Nation Class II program for an EPA-administered Class II program in the areas covered by the Tribe’s Primacy Application will impose no additional costs on the States of Arizona, Utah or

New Mexico. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA’s policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this 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” (65 FR 67249, 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.”

EPA has concluded that this proposed rule will have tribal implications. However, it will neither impose substantial direct compliance costs on the tribal government, nor preempt tribal law. The Navajo Nation has voluntarily requested authorization for primary enforcement responsibility for the Class II UIC program and has voluntarily assumed the Tribal share of the costs for doing so. Additionally, EPA is proposing to approve the Navajo Nation’s application for Class II UIC primacy and thus replace the existing Federal Class II UIC program in the areas covered by the Tribe’s Primacy Application with a Tribal program administered pursuant to the laws of the Navajo Nation. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this proposed rule.

Consistent with EPA policy, EPA nonetheless consulted with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Since awarding the first developmental grant to the Navajo Nation in fiscal year 1995 for developing capacity to assume the Class II UIC program, EPA has consulted and worked closely with the Tribe in the administration of these funds and in the development of the Tribe’s regulatory program.

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.



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

Executive Order 13045: "Protection of Children from Environmental Health Risks & 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 proposed rule is not subject to the Executive Order because it is not economically "significant" as defined in the Executive Order 12866. If finalized, the proposed rule would simply provide that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe would be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in the Proposed Decision Document. Therefore, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate risk to children.

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

This proposed 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*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. Section 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 involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it provides the same level of environmental protection as is currently provided by EPA and therefore will not have any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. If finalized, the proposed rule would simply provide that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe would be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in the Proposed Decision Document.

**List of Subjects in 40 CFR Part 147**

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

Dated: April 16, 2008.

**Stephen L. Johnson,**  
*Administrator.*

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS**

1. The authority citation for part 147 is revised to read as follows:

**Authority:** 42 U.S.C. 300h et seq.; and 42 U.S.C. 6901 et seq.

2. Part 147 heading is revised as set forth above.

**Subpart A—[Amended]**

3. Section 147.1 is revised to read as follows:

**§ 147.1 Purpose and scope.**

(a) This part sets forth the applicable Underground Injection Control (UIC) programs for each of the States, territories, and possessions identified pursuant to the Safe Drinking Water Act (SDWA) as needing a UIC program, including any Indian country geographically located within those States, territories, and possessions.

(b) The applicable UIC programs set forth in this part may be State-administered programs approved by EPA, Tribally-administered programs approved by EPA, or Federally-administered programs promulgated by EPA. In some cases, the applicable UIC program for a particular area may consist of a State-administered or Tribally-administered program applicable to some classes of wells and a Federally-administered program applicable to other classes of wells. Approval of a State or Tribal program is based upon a determination by the Administrator that the program meets the requirements of section 1422 or section 1425 of the SDWA, any other applicable provisions of this subpart, and the applicable provisions of 40 CFR parts 124, 144, 145 and 146. A Federally-administered program is promulgated in those instances where the State or Tribe has not submitted any program for approval or where the submitted program does not meet the minimum Federal statutory and regulatory requirements.

(c) In the case of each State or Tribal program approved by EPA pursuant to section 1422 of the SDWA, the relevant subpart describes the major elements of that program, including the relevant State or Tribal statutes and regulations, the Statement(s) of Legal Authority, the Memorandum of Agreement, and the Program Description. State or Tribal statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators have been incorporated by reference pursuant to regulations of the Office of the Federal Register. Material



incorporated by reference is available for inspection in the appropriate EPA Regional office, in EPA Headquarters, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Other State or Tribal statutes and regulations containing standards and procedures that constitute elements of a State or Tribal program but do not apply directly to owners or operators have been listed but have not been incorporated by reference.

(d) In the case of any program promulgated under section 1422 for a State or Tribe that is to be administered by EPA, the relevant State or Tribal subpart makes applicable the provisions of 40 CFR parts 124, 144, 146, and 148, and any other additional requirements pertinent to the specific State or Tribal program.

(e) Regulatory provisions incorporated by reference (in the case of approved State or Tribal programs) or promulgated by EPA (in the case of EPA-administered programs), and all permit conditions or permit denials issued pursuant to such regulations, are enforceable by the Administrator pursuant to section 1423 of the SDWA.

#### Subpart D—[Amended]

4. Section 147.151 is amended by revising the first two sentences of paragraph (a) and the last sentence of paragraph (b) to read as follows:

##### § 147.151 EPA-administered program.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is administered by EPA. The UIC program for Navajo Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program, consists of the requirements contained in subpart HHH of this part. \* \* \*

(b) \* \* \* The effective date for the UIC program on the lands of the Navajo, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

#### Subpart GG—[Amended]

5. Section 147.1603 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

##### § 147.1603 EPA-administered program—Indian Lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Mexico, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is administered by EPA. \* \* \*

(b) *Effective date.* The effective date for the UIC program on Indian lands in New Mexico, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

#### Subpart TT—[Amended]

6. Section 147.2253 is amended by revising the first two sentences of paragraph (a) and paragraph (b) to read as follows:

##### § 147.2253 EPA-administered program.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Utah, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is administered by EPA. The program for wells on Navajo Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program, and for Ute Mountain Ute consists of the requirements set forth at subpart HHH of this part. \* \* \*

(b) *Effective date.* The effective date for this program for all other Indian lands in Utah, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

#### Subpart HHH—[Amended]

7. Section 147.3000 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

##### § 147.3000 EPA-administered program.

(a) *Contents.* The UIC program for Navajo Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), the Ute Mountain Ute (Class II wells only

on Ute Mountain Ute lands in Colorado and all wells on Ute Mountain Ute lands in Utah and New Mexico), and all wells on other Indian lands in New Mexico is administered by EPA. \* \* \*

(b) *Effective date.* The effective date for the UIC program on these lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

8. Subpart KKK is added and reserved to read as follows:

#### Subpart KKK—[Reserved]

9. Subpart LLL is added to read as follows:

#### Subpart LLL—Navajo Indian Lands

##### § 147.3400 Navajo Indian Lands—Class II wells.

The UIC program for Class II injection wells located: Within the exterior boundaries of the formal Navajo Reservation, including the three satellite reservations (Alamo, Canoncito and Ramah), but excluding the former Bennett Freeze Area, the Four Corners Power Plant and the Navajo Generating Station; on Navajo Nation tribal trust and allotted lands outside those exterior boundaries (collectively referred to as “Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program”), is the program administered by the Navajo Nation approved by EPA pursuant to Section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on [insert date of publication of final rule]; the effective date of this program is [insert date 30 days after publication of final rule]. This program consists of the following elements as submitted to EPA in the Navajo Nation’s program application:

(a) *Incorporation by Reference.* The requirements set forth in the Navajo Nation’s statutes, regulations, and resolutions cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for Class II injection wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in this section). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained or inspected at the Navajo Nation Environmental Protection Agency Office UIC Office, Old NAPA Auto Parts Building (Tribal Bldg. #S009-080), Highway 64, Shiprock, New Mexico, 87420, at the

Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105-3920, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 200, Washington, DC.

(1) Navajo Nation Safe Drinking Water Act, Navajo Nation Code § 2501 et seq., Title 22, Chapter 11, Subchapter 15, Subchapters 1, 2, 5, 7, 8 (August 9, 2001):

(2) Navajo Nation Underground Injection Control Regulations promulgated September 12, 2006, Parts 1 through 3:

(3) Permit and Monitoring Fee Schedule, adopted June 28, 2001:

(4) Uniform Regulations for Permit Review, Administrative Enforcement: Orders, Hearings, and Rulemakings under Navajo Nation Environmental Acts, adopted September 5, 2001, Subparts 1 through 3.

(b) *Memorandum of Agreement (MOA)*. The MOA between EPA Region 9 and the Navajo Nation, signed by the EPA Regional Administrator on August 21, 2001. The Criminal Enforcement MOA between EPA Region 9 and the Navajo Nation, signed by EPA on October 30, 2006.

(c) *Statement of Legal Authority*. (1) "Statement of the Attorney General of the Navajo Nation Pursuant to 40 CFR § 145.24", August 27, 2001.

(2) "Statement of the Attorney General of the Navajo Nation Regarding the Regulatory Authority and Jurisdiction of the Navajo Nation with Respect To Its Underground Injection Control Program", July 3, 2002.

(3) "Supplemental Statement of the Navajo Nation Attorney General Regarding the Regulatory Authority and Jurisdiction of the Navajo Nation to Operate an Underground Injection Control Program under the Safe Drinking Water Act", October 11, 2006.

(d) *Program Description*. The Program Description submitted as part of the Navajo Nation's application, and any other materials submitted as part of this application or as a supplement thereto.

[FR Doc. E8-8961 Filed 4-23-08; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### 47 CFR Part 301

[Docket Number: 080324461-8462-01]

RIN 0660-AA17

#### The Household Eligibility and Application Process of the Coupon Program for Individuals Residing in Nursing Homes and Households that Utilize Post Office Boxes; Waiver

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** In this document, the National Telecommunications and Information Administration (NTIA) proposes certain changes affecting section 301.3 of its Digital-To-Analog Converter Box Coupon Program rules set forth at 47 CFR 301.3. Specifically, NTIA proposes to waive the "eligible household" and application requirements in section 301.3(a), and section 301.3(e), for individuals residing in nursing homes or other senior care facilities, subject to the alternative application requirements specified herein. NTIA also proposes to amend section 301.3(a)(2) to permit an otherwise eligible household that utilizes a post office box for mail receipt to apply for and receive coupons subject to providing satisfactory proof of physical residence.

**DATES:** Comments must be submitted by 5 p.m. EST, no later than June 9, 2008.

**ADDRESSES:** Comments via mail should be submitted to: Milton Brown, Office of the Chief Counsel, National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230. Comments may also be sent by facsimile to (202) 501-8013. Electronic comments may be submitted to coupon@ntia.doc.gov or to Regulations.gov at www.regulations.gov.

**FOR FURTHER INFORMATION CONTACT:** Milton Brown at (202) 482-1816.

**SUPPLEMENTARY INFORMATION:** The Digital Television Transition and Public Safety Act of 2005 (the Act), among other things, authorized NTIA to create a Digital-to-Analog Converter Box Coupon Program (Coupon Program) to assist consumers who wish to continue receiving broadcast programming over the air using analog-only televisions not

connected to cable or satellite service after the February 17, 2009, deadline for full power stations to convert to digital-only transmissions.<sup>1</sup> Specifically, Section 3005 of the Act directed NTIA to implement and administer a program through which eligible U.S. households may obtain via the United States Postal Service a maximum of two coupons of \$40 each to be applied towards the purchase of Coupon-Eligible Converter Boxes (CECB). To implement the Coupon Program, NTIA issued regulations on March 15, 2007.<sup>2</sup>

Since NTIA began accepting applications for coupons on January 1, 2008, the Program has received a number of applications submitted by, or on behalf of, individuals residing in nursing homes and from applicants who utilize a post office box for mail receipt. Because these applicants do not meet the current eligibility criteria under the Coupon Program regulations, these applications have been denied.

#### I. Nursing Home Residents

NTIA recognizes that our Nation's seniors, including those residing in nursing homes and other senior care facilities, constitute a vulnerable community that may rely on free, over-the-air television to a greater degree than other members of the public.<sup>3</sup> For this reason, seniors may have a greater need for converter boxes to continue receiving broadcast programming over the air using analog-only television sets. To date, NTIA has implemented the Coupon Program in a manner that strives to assure that no Americans lose television service as a result of the digital transition, and NTIA is committed to ensuring that the Program also addresses the particular needs of this vulnerable segment of the population as well. The eligibility requirements of the program, however, do not permit seniors living in nursing homes to avail themselves of the Coupon Program.

To permit seniors residing in nursing homes to participate in the program, NTIA proposes to waive the current household eligibility and application process set forth at 47 CFR 301.3 and to permit these individuals to apply for and receive one coupon under certain

<sup>1</sup> Title III of Pub. L. No. 109-171, 120 Stat. 4, 21 (2006).

<sup>2</sup> See 47 CFR Part 301.

<sup>3</sup> See Testimony of John M.R. Kneuer, Assistant Secretary for Communications and Information, Before the Committee on Commerce, Science and Transportation, United States Senate (Oct. 17, 2007) (recognizing seniors as a targeted group that depends on over-the-air television to a greater extent than the general population), available at [http://www.ntia.doc.gov/ntiahome/congress/2007/Kneuer\\_SenateCommerce\\_101707.htm](http://www.ntia.doc.gov/ntiahome/congress/2007/Kneuer_SenateCommerce_101707.htm).