

“(2) the duties and responsibilities of the Administrator under that Act; or

“(3) the regulation or control of point or nonpoint sources of pollution discharged into waters covered by that Act.

The Administrator shall identify in the agency’s annual budget all funding and full-time equivalents administering such title XIV separately from funding and staffing for the Federal Water Pollution Control Act.”

CONGRESSIONAL FINDINGS

Pub. L. 104–182, §3, Aug. 6, 1996, 110 Stat. 1614, provided that: “The Congress finds that—

“(1) safe drinking water is essential to the protection of public health;

“(2) because the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) now exceed the financial and technical capacity of some public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements;

“(3) the Federal Government commits to maintaining and improving its partnership with the States in the administration and implementation of the Safe Drinking Water Act;

“(4) States play a central role in the implementation of safe drinking water programs, and States need increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs;

“(5) the existing process for the assessment and selection of additional drinking water contaminants needs to be revised and improved to ensure that there is a sound scientific basis for setting priorities in establishing drinking water regulations;

“(6) procedures for assessing the health effects of contaminants establishing drinking water standards should be revised to provide greater opportunity for public education and participation;

“(7) in considering the appropriate level of regulation for contaminants in drinking water, risk assessment, based on sound and objective science, and benefit-cost analysis are important analytical tools for improving the efficiency and effectiveness of drinking water regulations to protect human health;

“(8) more effective protection of public health requires—

“(A) a Federal commitment to set priorities that will allow scarce Federal, State, and local resources to be targeted toward the drinking water problems of greatest public health concern;

“(B) maximizing the value of the different and complementary strengths and responsibilities of the Federal and State governments in those States that have primary enforcement responsibility for the Safe Drinking Water Act; and

“(C) prevention of drinking water contamination through well-trained system operators, water systems with adequate managerial, technical, and financial capacity, and enhanced protection of source waters of public water systems;

“(9) compliance with the requirements of the Safe Drinking Water Act continues to be a concern at public water systems experiencing technical and financial limitations, and Federal, State, and local governments need more resources and more effective authority to attain the objectives of the Safe Drinking Water Act; and

“(10) consumers served by public water systems should be provided with information on the source of the water they are drinking and its quality and safety, as well as prompt notification of any violation of drinking water regulations.”

GAO STUDY

Pub. L. 104–182, title I, §101(b)(2), Aug. 6, 1996, 110 Stat. 1617, required the Comptroller General to study

the reliance for residential water on various nonpublic water systems and to submit a report on the results of the study to Congress within 3 years after Aug. 6, 1996.

SAFE DRINKING WATER AMENDMENTS OF 1977 RESTRICTIONS ON APPROPRIATIONS FOR RESEARCH

Pub. L. 95–190, §2(e), Nov. 16, 1977, 91 Stat. 1393, provided that: “Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to authorize the appropriation of any amount for research under title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.] (relating to safe drinking water).”

SAFE DRINKING WATER AMENDMENTS OF 1977 AS NOT AFFECTING AUTHORITY OF ADMINISTRATOR WITH RESPECT TO CONTAMINANTS

Pub. L. 95–190, §3(e)(2), Nov. 16, 1977, 91 Stat. 1394, provided that: “Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to alter or affect the Administrator’s authority or duty under title 14 of the Public Health Service Act [42 U.S.C. 300f et seq.] to promulgate regulations or take other action with respect to any contaminant.”

RURAL WATER SURVEY; REPORT TO PRESIDENT AND CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 93–523, §3, Dec. 16, 1974, 88 Stat. 1693, as amended by Pub. L. 95–190, §§2(d), 3(d), Nov. 16, 1977, 91 Stat. 1393, 1394, directed Administrator of Environmental Protection Agency, after consultation with Secretary of Agriculture and the several States, to enter into arrangements with public or private entities to conduct a survey of quantity, quality, and availability of rural drinking water supplies, which survey was to include, but not be limited to, consideration of number of residents in each rural area who presently are being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system, or who presently have limited or otherwise inadequate access to drinking water, or who, due to absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard, and who have experienced incidents of chronic or acute illness, which may be attributed to inadequacy of a drinking water supply system. Survey to be completed within eighteen months of Dec. 16, 1974, and a final report thereon submitted, not later than six months after completion of survey, to President and to Congress.

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

PART B—PUBLIC WATER SYSTEMS

§ 300g. Coverage

Subject to sections 300g–4 and 300g–5 of this title, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

(July 1, 1944, ch. 373, title XIV, §1411, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1662.)

§ 300g-1. National drinking water regulations

(a) National primary drinking water regulations; maximum contaminant level goals; simultaneous publication of regulations and goals

(1) Effective on June 19, 1986, each national interim or revised primary drinking water regulation promulgated under this section before June 19, 1986, shall be deemed to be a national primary drinking water regulation under subsection (b). No such regulation shall be required to comply with the standards set forth in subsection (b)(4) unless such regulation is amended to establish a different maximum contaminant level after June 19, 1986.

(2) After June 19, 1986, each recommended maximum contaminant level published before June 19, 1986, shall be treated as a maximum contaminant level goal.

(3) Whenever a national primary drinking water regulation is proposed under subsection (b) for any contaminant, the maximum contaminant level goal for such contaminant shall be proposed simultaneously. Whenever a national primary drinking water regulation is promulgated under subsection (b) for any contaminant, the maximum contaminant level goal for such contaminant shall be published simultaneously.

(4) Paragraph (3) shall not apply to any recommended maximum contaminant level published before June 19, 1986.

(b) Standards

(1) IDENTIFICATION OF CONTAMINANTS FOR LISTING.—

(A) GENERAL AUTHORITY.—The Administrator shall, in accordance with the procedures established by this subsection, publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for a contaminant (other than a contaminant referred to in paragraph (2) for which a national primary drinking water regulation has been promulgated as of August 6, 1996) if the Administrator determines that—

(i) the contaminant may have an adverse effect on the health of persons;

(ii) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and

(iii) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.

(B) REGULATION OF UNREGULATED CONTAMINANTS.—

(i) LISTING OF CONTAMINANTS FOR CONSIDERATION.—(I) Not later than 18 months after August 6, 1996, and every 5 years thereafter, the Administrator, after consultation with the scientific community, including the Science Advisory Board, after notice and opportunity for public comment, and after considering the occurrence data base established under section 300j-4(g) of this title, shall publish a list of contaminants which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulation, which are known or anticipated to occur in public water systems, and which may require regulation under this subchapter.

(II) The unregulated contaminants considered under subclause (I) shall include, but not be limited to, substances referred to in section 9601(14) of this title, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

(III) The Administrator's decision whether or not to select an unregulated contaminant for a list under this clause shall not be subject to judicial review.

(ii) DETERMINATION TO REGULATE.—(I) Not later than 5 years after August 6, 1996, and every 5 years thereafter, the Administrator shall, after notice of the preliminary determination and opportunity for public comment, for not fewer than 5 contaminants included on the list published under clause (i), make determinations of whether or not to regulate such contaminants.

(II) A determination to regulate a contaminant shall be based on findings that the criteria of clauses (i), (ii), and (iii) of subparagraph (A) are satisfied. Such findings shall be based on the best available public health information, including the occurrence data base established under section 300j-4(g) of this title.

(III) The Administrator may make a determination to regulate a contaminant that does not appear on a list under clause (i) if the determination to regulate is made pursuant to subclause (II).

(IV) A determination under this clause not to regulate a contaminant shall be considered final agency action and subject to judicial review.

(iii) REVIEW.—Each document setting forth the determination for a contaminant under clause (ii) shall be available for public comment at such time as the determination is published.

(C) PRIORITIES.—In selecting unregulated contaminants for consideration under subparagraph (B), the Administrator shall select contaminants that present the greatest public health concern. The Administrator, in making such selection, shall take into consideration, among other factors of public health concern, the effect of such contaminants upon subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations) that are identifiable as being at

greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population.

(D) URGENT THREATS TO PUBLIC HEALTH.—The Administrator may promulgate an interim national primary drinking water regulation for a contaminant without making a determination for the contaminant under paragraph (4)(C), or completing the analysis under paragraph (3)(C), to address an urgent threat to public health as determined by the Administrator after consultation with and written response to any comments provided by the Secretary of Health and Human Services, acting through the director of the Centers for Disease Control and Prevention or the director of the National Institutes of Health. A determination for any contaminant in accordance with paragraph (4)(C) subject to an interim regulation under this subparagraph shall be issued, and a completed analysis meeting the requirements of paragraph (3)(C) shall be published, not later than 3 years after the date on which the regulation is promulgated and the regulation shall be repromulgated, or revised if appropriate, not later than 5 years after that date.

(E) REGULATION.—For each contaminant that the Administrator determines to regulate under subparagraph (B), the Administrator shall publish maximum contaminant level goals and promulgate, by rule, national primary drinking water regulations under this subsection. The Administrator shall propose the maximum contaminant level goal and national primary drinking water regulation for a contaminant not later than 24 months after the determination to regulate under subparagraph (B), and may publish such proposed regulation concurrent with the determination to regulate. The Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation within 18 months after the proposal thereof. The Administrator, by notice in the Federal Register, may extend the deadline for such promulgation for up to 9 months.

(F) HEALTH ADVISORIES AND OTHER ACTIONS.—The Administrator may publish health advisories (which are not regulations) or take other appropriate actions for contaminants not subject to any national primary drinking water regulation.

(2) SCHEDULES AND DEADLINES.—

(A) IN GENERAL.—In the case of the contaminants listed in the Advance Notice of Proposed Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations—

- (i) not later than 1 year after June 19, 1986, for not fewer than 9 of the listed contaminants;
- (ii) not later than 2 years after June 19, 1986, for not fewer than 40 of the listed contaminants; and
- (iii) not later than 3 years after June 19, 1986, for the remainder of the listed contaminants.

(B) SUBSTITUTION OF CONTAMINANTS.—If the Administrator identifies a drinking water contaminant the regulation of which, in the judgment of the Administrator, is more likely to be protective of public health (taking into account the schedule for regulation under subparagraph (A)) than a contaminant referred to in subparagraph (A), the Administrator may publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for the identified contaminant in lieu of regulating the contaminant referred to in subparagraph (A). Substitutions may be made for not more than 7 contaminants referred to in subparagraph (A). Regulation of a contaminant identified under this subparagraph shall be in accordance with the schedule applicable to the contaminant for which the substitution is made.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator shall promulgate an Interim Enhanced Surface Water Treatment Rule, a Final Enhanced Surface Water Treatment Rule, a Stage I Disinfectants and Disinfection Byproducts Rule, and a Stage II Disinfectants and Disinfection Byproducts Rule in accordance with the schedule published in volume 59, Federal Register, page 6361 (February 10, 1994), in table III.13 of the proposed Information Collection Rule. If a delay occurs with respect to the promulgation of any rule in the schedule referred to in this subparagraph, all subsequent rules shall be completed as expeditiously as practicable but no later than a revised date that reflects the interval or intervals for the rules in the schedule.

(3) RISK ASSESSMENT, MANAGEMENT, AND COMMUNICATION.—

(A) USE OF SCIENCE IN DECISIONMAKING.—In carrying out this section, and, to the degree that an Agency action is based on science, the Administrator shall use—

- (i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and
- (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

(B) PUBLIC INFORMATION.—In carrying out this section, the Administrator shall ensure that the presentation of information on public health effects is comprehensive, informative, and understandable. The Administrator shall, in a document made available to the public in support of a regulation promulgated under this section, specify, to the extent practicable—

- (i) each population addressed by any estimate of public health effects;
- (ii) the expected risk or central estimate of risk for the specific populations;
- (iii) each appropriate upper-bound or lower-bound estimate of risk;
- (iv) each significant uncertainty identified in the process of the assessment of public health effects and studies that would assist in resolving the uncertainty; and
- (v) peer-reviewed studies known to the Administrator that support, are directly rel-

evant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data.

(C) HEALTH RISK REDUCTION AND COST ANALYSIS.—

(i) MAXIMUM CONTAMINANT LEVELS.—When proposing any national primary drinking water regulation that includes a maximum contaminant level, the Administrator shall, with respect to a maximum contaminant level that is being considered in accordance with paragraph (4) and each alternative maximum contaminant level that is being considered pursuant to paragraph (5) or (6)(A), publish, seek public comment on, and use for the purposes of paragraphs (4), (5), and (6) an analysis of each of the following:

(I) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur as the result of treatment to comply with each level.

(II) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-occurring contaminants that may be attributed solely to compliance with the maximum contaminant level, excluding benefits resulting from compliance with other proposed or promulgated regulations.

(III) Quantifiable and nonquantifiable costs for which there is a factual basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of compliance with the maximum contaminant level, including monitoring, treatment, and other costs and excluding costs resulting from compliance with other proposed or promulgated regulations.

(IV) The incremental costs and benefits associated with each alternative maximum contaminant level considered.

(V) The effects of the contaminant on the general population and on groups within the general population such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population.

(VI) Any increased health risk that may occur as the result of compliance, including risks associated with co-occurring contaminants.

(VII) Other relevant factors, including the quality and extent of the information, the uncertainties in the analysis supporting subclauses (I) through (VI), and factors with respect to the degree and nature of the risk.

(ii) TREATMENT TECHNIQUES.—When proposing a national primary drinking water regulation that includes a treatment tech-

nique in accordance with paragraph (7)(A), the Administrator shall publish and seek public comment on an analysis of the health risk reduction benefits and costs likely to be experienced as the result of compliance with the treatment technique and alternative treatment techniques that are being considered, taking into account, as appropriate, the factors described in clause (i).

(iii) APPROACHES TO MEASURE AND VALUE BENEFITS.—The Administrator may identify valid approaches for the measurement and valuation of benefits under this subparagraph, including approaches to identify consumer willingness to pay for reductions in health risks from drinking water contaminants.

(iv) AUTHORIZATION.—There are authorized to be appropriated to the Administrator, acting through the Office of Ground Water and Drinking Water, to conduct studies, assessments, and analyses in support of regulations or the development of methods, \$35,000,000 for each of fiscal years 1996 through 2003.

(4) GOALS AND STANDARDS.—

(A) MAXIMUM CONTAMINANT LEVEL GOALS.—Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.

(B) MAXIMUM CONTAMINANT LEVELS.—Except as provided in paragraphs (5) and (6), each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum contaminant level for such contaminant which is as close to the maximum contaminant level goal as is feasible.

(C) DETERMINATION.—At the time the Administrator proposes a national primary drinking water regulation under this paragraph, the Administrator shall publish a determination as to whether the benefits of the maximum contaminant level justify, or do not justify, the costs based on the analysis conducted under paragraph (3)(C).

(D) DEFINITION OF FEASIBLE.—For the purposes of this subsection, the term “feasible” means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purpose of this paragraph, granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon.

(E) FEASIBLE TECHNOLOGIES.—

(i) IN GENERAL.—Each national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment techniques, and other

means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a regulation under this subsection shall not require that any specified technology, treatment technique, or other means be used for purposes of meeting such maximum contaminant level.

(ii) LIST OF TECHNOLOGIES FOR SMALL SYSTEMS.—The Administrator shall include in the list any technology, treatment technique, or other means that is affordable, as determined by the Administrator in consultation with the States, for small public water systems serving—

(I) a population of 10,000 or fewer but more than 3,300;

(II) a population of 3,300 or fewer but more than 500; and

(III) a population of 500 or fewer but more than 25;

and that achieves compliance with the maximum contaminant level or treatment technique, including packaged or modular systems and point-of-entry or point-of-use treatment units. Point-of-entry and point-of-use treatment units shall be owned, controlled and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the maximum contaminant level or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems. The Administrator shall not include in the list any point-of-use treatment technology, treatment technique, or other means to achieve compliance with a maximum contaminant level or treatment technique requirement for a microbial contaminant (or an indicator of a microbial contaminant). If the American National Standards Institute has issued product standards applicable to a specific type of point-of-entry or point-of-use treatment unit, individual units of that type shall not be accepted for compliance with a maximum contaminant level or treatment technique requirement unless they are independently certified in accordance with such standards. In listing any technology, treatment technique, or other means pursuant to this clause, the Administrator shall consider the quality of the source water to be treated.

(iii) LIST OF TECHNOLOGIES THAT ACHIEVE COMPLIANCE.—Except as provided in clause (v), not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue a list of technologies that achieve compliance with the maximum contaminant level or treatment technique for each category of public water systems described in subclauses (I), (II), and (III) of clause (ii) for each national primary drinking water regulation promulgated prior to June 19, 1986.

(iv) ADDITIONAL TECHNOLOGIES.—The Administrator may, at any time after a national primary drinking water regulation has been promulgated, supplement the list of technologies describing additional or new or

innovative treatment technologies that meet the requirements of this paragraph for categories of small public water systems described in subclauses (I), (II), and (III) of clause (ii) that are subject to the regulation.

(v) TECHNOLOGIES THAT MEET SURFACE WATER TREATMENT RULE.—Within one year after August 6, 1996, the Administrator shall list technologies that meet the Surface Water Treatment Rule for each category of public water systems described in subclauses (I), (II), and (III) of clause (ii).

(5) ADDITIONAL HEALTH RISK CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), the Administrator may establish a maximum contaminant level for a contaminant at a level other than the feasible level, if the technology, treatment techniques, and other means used to determine the feasible level would result in an increase in the health risk from drinking water by—

(i) increasing the concentration of other contaminants in drinking water; or

(ii) interfering with the efficacy of drinking water treatment techniques or processes that are used to comply with other national primary drinking water regulations.

(B) ESTABLISHMENT OF LEVEL.—If the Administrator establishes a maximum contaminant level or levels or requires the use of treatment techniques for any contaminant or contaminants pursuant to the authority of this paragraph—

(i) the level or levels or treatment techniques shall minimize the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants the concentrations of which may be affected by the use of a treatment technique or process that would be employed to attain the maximum contaminant level or levels; and

(ii) the combination of technology, treatment techniques, or other means required to meet the level or levels shall not be more stringent than is feasible (as defined in paragraph (4)(D)).

(6) ADDITIONAL HEALTH RISK REDUCTION AND COST CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), if the Administrator determines based on an analysis conducted under paragraph (3)(C) that the benefits of a maximum contaminant level promulgated in accordance with paragraph (4) would not justify the costs of complying with the level, the Administrator may, after notice and opportunity for public comment, promulgate a maximum contaminant level for the contaminant that maximizes health risk reduction benefits at a cost that is justified by the benefits.

(B) EXCEPTION.—The Administrator shall not use the authority of this paragraph to promulgate a maximum contaminant level for a contaminant, if the benefits of compliance with a national primary drinking water regulation for the contaminant that would be promulgated in accordance with paragraph (4) experienced by—

(i) persons served by large public water systems; and

(ii) persons served by such other systems as are unlikely, based on information provided by the States, to receive a variance under section 300g-4(e) of this title (relating to small system variances);

would justify the costs to the systems of complying with the regulation. This subparagraph shall not apply if the contaminant is found almost exclusively in small systems eligible under section 300g-4(e) of this title for a small system variance.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator may not use the authority of this paragraph to establish a maximum contaminant level in a Stage I or Stage II national primary drinking water regulation (as described in paragraph (2)(C)) for contaminants that are disinfectants or disinfection byproducts, or to establish a maximum contaminant level or treatment technique requirement for the control of cryptosporidium. The authority of this paragraph may be used to establish regulations for the use of disinfection by systems relying on ground water sources as required by paragraph (8).

(D) JUDICIAL REVIEW.—A determination by the Administrator that the benefits of a maximum contaminant level or treatment requirement justify or do not justify the costs of complying with the level shall be reviewed by the court pursuant to section 300j-7 of this title only as part of a review of a final national primary drinking water regulation that has been promulgated based on the determination and shall not be set aside by the court under that section unless the court finds that the determination is arbitrary and capricious.

(7)(A) The Administrator is authorized to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant. In such case, the Administrator shall identify those treatment techniques which, in the Administrator's judgment, would prevent known or anticipated adverse effects on the health of persons to the extent feasible. Such regulations shall specify each treatment technique known to the Administrator which meets the requirements of this paragraph, but the Administrator may grant a variance from any specified treatment technique in accordance with section 300g-4(a)(3) of this title.

(B) Any schedule referred to in this subsection for the promulgation of a national primary drinking water regulation for any contaminant shall apply in the same manner if the regulation requires a treatment technique in lieu of establishing a maximum contaminant level.

(C)(i) Not later than 18 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of

source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

(ii) In lieu of the provisions of section 300g-4 of this title the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall adopt filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prescribe a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance within 18 months of a determination made under clause (iii).

(iii) Within 18 months from the time that the Administrator establishes the criteria and procedures under this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within 12 months of adoption of such regulations the State shall make determinations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to make the determination in clause (ii) in such State as the State would have under that clause. Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

(v) As an additional alternative to the regulations promulgated pursuant to clauses (i) and (iii), including the criteria for avoiding filtration contained in 40 CFR 141.71, a State exercising primary enforcement responsibility for public water systems may, on a case-by-case basis, and after notice and opportunity for public comment, establish treatment requirements as an alternative to filtration in the case of systems having uninhabited, undeveloped watersheds in consolidated ownership, and having control over access to, and activities in, those watersheds, if the State determines (and the Administrator concurs) that the quality of the source water and the alternative treatment requirements established by the State ensure greater removal or inactivation efficiencies of pathogenic organisms for which national primary drinking water regulations have been promulgated or that are of public health concern than would be achieved by the combination of filtration and chlorine disinfection (in compliance with this section).

(8) DISINFECTION.—At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water sys-

tems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g-2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water. The Administrator shall simultaneously promulgate a rule specifying criteria that will be used by the Administrator (or delegated State authorities) to grant variances from this requirement according to the provisions of sections 300g-4(a)(1)(B) and 300g-4(a)(3) of this title. In implementing section 300j-1(e) of this title the Administrator or the delegated State authority shall, where appropriate, give special consideration to providing technical assistance to small public water systems in complying with the regulations promulgated under this paragraph.

(9) REVIEW AND REVISION.—The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this subchapter. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

(10) EFFECTIVE DATE.—A national primary drinking water regulation promulgated under this section (and any amendment thereto) shall take effect on the date that is 3 years after the date on which the regulation is promulgated unless the Administrator determines that an earlier date is practicable, except that the Administrator, or a State (in the case of an individual system), may allow up to 2 additional years to comply with a maximum contaminant level or treatment technique if the Administrator or State (in the case of an individual system) determines that additional time is necessary for capital improvements.

(11) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(12) CERTAIN CONTAMINANTS.—

(A) ARSENIC.—

(i) SCHEDULE AND STANDARD.—Notwithstanding the deadlines set forth in paragraph (1), the Administrator shall promulgate a national primary drinking water regulation for arsenic pursuant to this subsection, in accordance with the schedule established by this paragraph.

(ii) STUDY PLAN.—Not later than 180 days after August 6, 1996, the Administrator shall develop a comprehensive plan for study in support of drinking water rulemaking to reduce the uncertainty in assessing health risks associated with exposure to low levels of arsenic. In conducting such study, the Administrator shall consult with the National Academy of Sciences, other Federal agencies, and interested public and private entities.

(iii) COOPERATIVE AGREEMENTS.—In carrying out the study plan, the Administrator

may enter into cooperative agreements with other Federal agencies, State and local governments, and other interested public and private entities.

(iv) PROPOSED REGULATIONS.—The Administrator shall propose a national primary drinking water regulation for arsenic not later than January 1, 2000.

(v) FINAL REGULATIONS.—Not later than January 1, 2001, after notice and opportunity for public comment, the Administrator shall promulgate a national primary drinking water regulation for arsenic.

(vi) AUTHORIZATION.—There are authorized to be appropriated \$2,500,000 for each of fiscal years 1997 through 2000 for the studies required by this paragraph.

(B) SULFATE.—

(i) ADDITIONAL STUDY.—Prior to promulgating a national primary drinking water regulation for sulfate, the Administrator and the Director of the Centers for Disease Control and Prevention shall jointly conduct an additional study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to sulfate in drinking water, including the health effects that may be experienced by groups within the general population (including infants and travelers) that are potentially at greater risk of adverse health effects as the result of such exposure. The study shall be conducted in consultation with interested States, shall be based on the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and shall be completed not later than 30 months after August 6, 1996.

(ii) DETERMINATION.—The Administrator shall include sulfate among the 5 or more contaminants for which a determination is made pursuant to paragraph (3)(B) not later than 5 years after August 6, 1996.

(iii) PROPOSED AND FINAL RULE.—Notwithstanding the deadlines set forth in paragraph (2), the Administrator may, pursuant to the authorities of this subsection and after notice and opportunity for public comment, promulgate a final national primary drinking water regulation for sulfate. Any such regulation shall include requirements for public notification and options for the provision of alternative water supplies to populations at risk as a means of complying with the regulation in lieu of a best available treatment technology or other means.

(13) RADON IN DRINKING WATER.—

(A) NATIONAL PRIMARY DRINKING WATER REGULATION.—Notwithstanding paragraph (2), the Administrator shall withdraw any national primary drinking water regulation for radon proposed prior to August 6, 1996, and shall propose and promulgate a regulation for radon under this section, as amended by the Safe Drinking Water Act Amendments of 1996.

(B) RISK ASSESSMENT AND STUDIES.—

(i) ASSESSMENT BY NAS.—Prior to proposing a national primary drinking water regulation for radon, the Administrator

shall arrange for the National Academy of Sciences to prepare a risk assessment for radon in drinking water using the best available science in accordance with the requirements of paragraph (3). The risk assessment shall consider each of the risks associated with exposure to radon from drinking water and consider studies on the health effects of radon at levels and under conditions likely to be experienced through residential exposure. The risk assessment shall be peer-reviewed.

(ii) STUDY OF OTHER MEASURES.—The Administrator shall arrange for the National Academy of Sciences to prepare an assessment of the health risk reduction benefits associated with various mitigation measures to reduce radon levels in indoor air. The assessment may be conducted as part of the risk assessment authorized by clause (i) and shall be used by the Administrator to prepare the guidance and approve State programs under subparagraph (G).

(iii) OTHER ORGANIZATION.—If the National Academy of Sciences declines to prepare the risk assessment or studies required by this subparagraph, the Administrator shall enter into a contract or cooperative agreement with another independent, scientific organization to prepare such assessments or studies.

(C) HEALTH RISK REDUCTION AND COST ANALYSIS.—Not later than 30 months after August 6, 1996, the Administrator shall publish, and seek public comment on, a health risk reduction and cost analysis meeting the requirements of paragraph (3)(C) for potential maximum contaminant levels that are being considered for radon in drinking water. The Administrator shall include a response to all significant public comments received on the analysis with the preamble for the proposed rule published under subparagraph (D).

(D) PROPOSED REGULATION.—Not later than 36 months after August 6, 1996, the Administrator shall propose a maximum contaminant level goal and a national primary drinking water regulation for radon pursuant to this section.

(E) FINAL REGULATION.—Not later than 12 months after the date of the proposal under subparagraph (D), the Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for radon pursuant to this section based on the risk assessment prepared pursuant to subparagraph (B) and the health risk reduction and cost analysis published pursuant to subparagraph (C). In considering the risk assessment and the health risk reduction and cost analysis in connection with the promulgation of such a standard, the Administrator shall take into account the costs and benefits of control programs for radon from other sources.

(F) ALTERNATIVE MAXIMUM CONTAMINANT LEVEL.—If the maximum contaminant level for radon in drinking water promulgated pursuant to subparagraph (E) is more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a

concentration that is equivalent to the national average concentration of radon in outdoor air, the Administrator shall, simultaneously with the promulgation of such level, promulgate an alternative maximum contaminant level for radon that would result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air. If the Administrator promulgates an alternative maximum contaminant level under this subparagraph, the Administrator shall, after notice and opportunity for public comment and in consultation with the States, publish guidelines for State programs, including criteria for multimedia measures to mitigate radon levels in indoor air, to be used by the States in preparing programs under subparagraph (G). The guidelines shall take into account data from existing radon mitigation programs and the assessment of mitigation measures prepared under subparagraph (B).

(G) MULTIMEDIA RADON MITIGATION PROGRAMS.—

(i) IN GENERAL.—A State may develop and submit a multimedia program to mitigate radon levels in indoor air for approval by the Administrator under this subparagraph. If, after notice and the opportunity for public comment, such program is approved by the Administrator, public water systems in the State may comply with the alternative maximum contaminant level promulgated under subparagraph (F) in lieu of the maximum contaminant level in the national primary drinking water regulation promulgated under subparagraph (E).

(ii) ELEMENTS OF PROGRAMS.—State programs may rely on a variety of mitigation measures including public education, testing, training, technical assistance, remediation grant and loan or incentive programs, or other regulatory or nonregulatory measures. The effectiveness of elements in State programs shall be evaluated by the Administrator based on the assessment prepared by the National Academy of Sciences under subparagraph (B) and the guidelines published by the Administrator under subparagraph (F).

(iii) APPROVAL.—The Administrator shall approve a State program submitted under this paragraph if the health risk reduction benefits expected to be achieved by the program are equal to or greater than the health risk reduction benefits that would be achieved if each public water system in the State complied with the maximum contaminant level promulgated under subparagraph (E). The Administrator shall approve or disapprove a program submitted under this paragraph within 180 days of receipt. A program that is not disapproved during such period shall be deemed approved. A program that is disapproved may be modified to address the objections of the Administrator and be resubmitted for approval.

(iv) REVIEW.—The Administrator shall periodically, but not less often than every 5 years, review each multimedia mitigation program approved under this subparagraph

to determine whether it continues to meet the requirements of clause (iii) and shall, after written notice to the State and an opportunity for the State to correct any deficiency in the program, withdraw approval of programs that no longer comply with such requirements.

(v) EXTENSION.—If, within 90 days after the promulgation of an alternative maximum contaminant level under subparagraph (F), the Governor of a State submits a letter to the Administrator committing to develop a multimedia mitigation program under this subparagraph, the effective date of the national primary drinking water regulation for radon in the State that would be applicable under paragraph (10) shall be extended for a period of 18 months.

(vi) LOCAL PROGRAMS.—In the event that a State chooses not to submit a multimedia mitigation program for approval under this subparagraph or has submitted a program that has been disapproved, any public water system in the State may submit a program for approval by the Administrator according to the same criteria, conditions, and approval process that would apply to a State program. The Administrator shall approve a multimedia mitigation program if the health risk reduction benefits expected to be achieved by the program are equal to or greater than the health risk reduction benefits that would result from compliance by the public water system with the maximum contaminant level for radon promulgated under subparagraph (E).

(14) RECYCLING OF FILTER BACKWASH.—The Administrator shall promulgate a regulation to govern the recycling of filter backwash water within the treatment process of a public water system. The Administrator shall promulgate such regulation not later than 4 years after August 6, 1996, unless such recycling has been addressed by the Administrator's Enhanced Surface Water Treatment Rule prior to such date.

(15) VARIANCE TECHNOLOGIES.—

(A) IN GENERAL.—At the same time as the Administrator promulgates a national primary drinking water regulation for a contaminant pursuant to this section, the Administrator shall issue guidance or regulations describing the best treatment technologies, treatment techniques, or other means (referred to in this paragraph as "variance technology") for the contaminant that the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available and affordable, as determined by the Administrator in consultation with the States, for public water systems of varying size, considering the quality of the source water to be treated. The Administrator shall identify such variance technologies for public water systems serving—

- (i) a population of 10,000 or fewer but more than 3,300;
- (ii) a population of 3,300 or fewer but more than 500; and
- (iii) a population of 500 or fewer but more than 25,

if, considering the quality of the source water to be treated, no treatment technology is listed for public water systems of that size under paragraph (4)(E). Variance technologies identified by the Administrator pursuant to this paragraph may not achieve compliance with the maximum contaminant level or treatment technique requirement of such regulation, but shall achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. The guidance or regulations shall not require the use of a technology from a specific manufacturer or brand.

(B) LIMITATION.—The Administrator shall not identify any variance technology under this paragraph, unless the Administrator has determined, considering the quality of the source water to be treated and the expected useful life of the technology, that the variance technology is protective of public health.

(C) ADDITIONAL INFORMATION.—The Administrator shall include in the guidance or regulations identifying variance technologies under this paragraph any assumptions supporting the public health determination referred to in subparagraph (B), where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Administrator shall provide any assumptions used in determining affordability, taking into consideration the number of persons served by such systems. The Administrator shall provide as much reliable information as practicable on performance, effectiveness, limitations, costs, and other relevant factors including the applicability of variance technology to waters from surface and underground sources.

(D) REGULATIONS AND GUIDANCE.—Not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue guidance or regulations under subparagraph (A) for each national primary drinking water regulation promulgated prior to August 6, 1996, for which a variance may be granted under section 300g-4(e) of this title. The Administrator may, at any time after a national primary drinking water regulation has been promulgated, issue guidance or regulations describing additional variance technologies. The Administrator shall, not less often than every 7 years, or upon receipt of a petition supported by substantial information, review variance technologies identified under this paragraph. The Administrator shall issue revised guidance or regulations if new or innovative variance technologies become available that meet the requirements of this paragraph and achieve an equal or greater reduction or inactivation efficiency than the variance technologies previously identified under this subparagraph. No public water system shall be required to replace a variance technology during the useful life of the technology for the sole reason that a more efficient variance technology has been listed under this subparagraph.

(c) Secondary regulations; publication of proposed regulations; promulgation; amendments

The Administrator shall publish proposed national secondary drinking water regulations within 270 days after December 16, 1974. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations; public hearings; administrative consultations

Regulations under this section shall be prescribed in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e) Science Advisory Board comments

The Administrator shall request comments from the Science Advisory Board (established under the Environmental Research, Development, and Demonstration Act of 1978) prior to proposal of a maximum contaminant level goal and national primary drinking water regulation. The Board shall respond, as it deems appropriate, within the time period applicable for promulgation of the national primary drinking water standard concerned. This subsection shall, under no circumstances, be used to delay final promulgation of any national primary drinking water standard.

(July 1, 1944, ch. 373, title XIV, §1412, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1662; amended Pub. L. 95-190, §§3(c), 12(a), Nov. 16, 1977, 91 Stat. 1394, 1398; Pub. L. 99-339, title I, §101(a)-(c)(1), (d), (e), June 19, 1986, 100 Stat. 642-646; Pub. L. 104-182, title I, §§102(a), (c)(2), 103, 104(a), (c), 105-111(a), title V, §501(a)(1), (2), Aug. 6, 1996, 110 Stat. 1617, 1621-1623, 1625-1631, 1691.)

Editorial Notes

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b)(1)(B)(i)(II), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Safe Drinking Water Act Amendments of 1996, referred to in subsec. (b)(13)(A), is Pub. L. 104-182, Aug. 6, 1996, 110 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 201 of this title and Tables.

The Environmental Research, Development, and Demonstration Act of 1978, referred to in subsec. (e), probably means the Environmental Research, Development, and Demonstration Authorization Act of 1978 which is Pub. L. 95-155, Nov. 8, 1977, 91 Stat. 1257, as amended. Provisions of the Act establishing the Science Advisory Board are classified to section 4365 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104-182, §102(c)(2), struck out “paragraph (1), (2), or (3) of” before “subsection (b)” in two places.

Subsec. (b). Pub. L. 104-182, §102(a), inserted heading. Subsec. (b)(1), (2). Pub. L. 104-182, §102(a), added pars. (1) and (2) and struck out former pars. (1) and (2) which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for certain listed contaminants or substituted contaminants.

Subsec. (b)(3). Pub. L. 104-182, §103, added par. (3). Pub. L. 104-182, §102(a), struck out par. (3) which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for contaminants, other than those referred to in pars. (1) or (2), which may have an adverse effect on human health and are known to occur in public water systems.

Subsec. (b)(4). Pub. L. 104-182, §104(a)(1), designated first sentence as subpar. (A), inserted par. and subpar. (A) headings, designated second sentence as subpar. (B), inserted subpar. (B) heading, substituted “Except as provided in paragraphs (5) and (6), each national” for “Each national” and “specify a maximum contaminant level” for “specify a maximum level”, and added subpar. (C).

Subsec. (b)(4)(D). Pub. L. 104-182, §104(a)(2), (3), redesignated par. (5) as subpar. (D) of par. (4), inserted subpar. heading, and substituted “this paragraph” for “paragraph (4)”.

Subsec. (b)(4)(E). Pub. L. 104-182, §§104(a)(4), (5), 105, redesignated par. (6) as subpar. (E)(i) of par. (4), inserted subpar. and cl. headings, substituted “this subsection” for “this paragraph”, and added cls. (ii) to (v).

Subsec. (b)(5), (6). Pub. L. 104-182, §104(a)(6), added pars. (5) and (6). Former pars. (5) and (6) redesignated subpars. (D) and (E)(i), respectively, of par. (4).

Subsec. (b)(7)(C)(v). Pub. L. 104-182, §106, added cl. (v).

Subsec. (b)(8). Pub. L. 104-182, §501(a)(2), substituted “section 300j-1(e)” for “section 300j-1(g)”.

Pub. L. 104-182, §107, inserted heading, realigned margins, and substituted “At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g-2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water.” for “Not later than 36 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems.”

Subsec. (b)(9). Pub. L. 104-182, §104(c), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “National primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years. Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous 3-year period and that may provide for greater protection of the health of persons. The findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that the technology, treatment techniques, or other means resulting from such innovations or

changes are not feasible within the meaning of paragraph (5), an explanation of such conclusion shall be published in the Federal Register."

Subsec. (b)(10). Pub. L. 104-182, § 108, amended par. (10) generally. Prior to amendment, par. (10) read as follows: "National primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after the date of their promulgation. Regulations under subsection (a) of this section shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection."

Subsec. (b)(11). Pub. L. 104-182, § 501(a)(1), realigned margins.

Subsec. (b)(12). Pub. L. 104-182, § 109(a), added par. (12).

Subsec. (b)(13). Pub. L. 104-182, § 109(b), added par. (13).

Subsec. (b)(14). Pub. L. 104-182, § 110, added par. (14).

Subsec. (b)(15). Pub. L. 104-182, § 111(a), added par. (15). 1986—Subsec. (a). Pub. L. 99-339, § 101(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

"(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.

"(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation."

Subsec. (b)(1). Pub. L. 99-339, § 101(b), substituted provisions establishing standard setting schedules and deadlines for provisions relating to establishment of maximum contaminant levels and a list of contaminants with adverse effect but of undetermined levels.

Subsec. (b)(2). Pub. L. 99-339, § 101(b), substituted provisions authorizing the Administrator to substitute contaminants for those referred to in par. (1) and to supply a list of the contaminants proposed for substitution, with the decision of the Administrator to regulate such contaminant not subject to judicial review, for provisions which authorized the Administrator to publish in the Federal Register proposed revised national interim primary drinking water regulations and 180 days after the date of such proposed regulations to promulgate such revised regulations with modification as deemed appropriate.

Subsec. (b)(3). Pub. L. 99-339, § 101(b), substituted provisions directing the Administrator to publish maximum contaminant level goals and promulgate national primary drinking water regulations for contaminants, other than specified in par. (1) or (2), which may have an adverse effect on health and are known or anticipated to occur in public water systems, to establish an advisory working group to aid in establishing a list of such contaminants, and to publish, within a specified time, both proposed and final goals and regulations for provisions which required that revised national primary drinking water regulations specify a maximum contaminant level or require the use of treatment techniques for each contaminant, which level or technique was to be as close to the recommended level or technique as feasible, and defined the term "feasible".

Subsec. (b)(4) to (11). Pub. L. 99-339, § 101(b), (c)(1), (d), added pars. (4) to (8), redesignated former pars. (4) to (6) as pars. (9) to (11), respectively, in par. (9) substituted "National" for "Revised National" and inserted provision that review include analysis, and publication in Federal Register, of innovations in technology, treatment techniques or other activities occurring during previous three years and their feasibility, and in par. (10) substituted "National" for "Revised National".

Subsec. (e). Pub. L. 99-339, § 101(e), amended subsec. (e) generally, substituting provisions which relate to

the request by the Administrator of comments by the Science Advisory Board prior to proposal of a maximum contaminant level goal and national primary drinking water regulation for provisions which related to study by the National Academy of Sciences to determine the maximum contaminant levels, report to Congress, and funding therefor.

1977—Subsec. (e)(2). Pub. L. 95-190 inserted provisions relating to revisions of the required report and cl. (G).

Statutory Notes and Related Subsidiaries

NATIONAL PRIMARY DRINKING WATER REGULATION FOR ARSENIC

Pub. L. 106-377, § 1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A-41, provided in part: "That notwithstanding section 1412(b)(12)(A)(v) of the Safe Drinking Water Act, as amended [42 U.S.C. 300g-1(b)(12)(A)(v)], the Administrator shall promulgate a national primary drinking water regulation for arsenic not later than June 22, 2001."

APPLICABILITY OF PRIOR REQUIREMENTS

Pub. L. 104-182, title I, § 102(b), Aug. 6, 1996, 110 Stat. 1620, provided that: "The requirements of subparagraphs (C) and (D) of section 1412(b)(3) of the Safe Drinking Water Act [42 U.S.C. 300g-1(b)(3)(C), (D)] as in effect before the date of enactment of this Act [Aug. 6, 1996], and any obligation to promulgate regulations pursuant to such subparagraphs not promulgated as of the date of enactment of this Act, are superseded by the amendments made by subsection (a) [amending this section]."

DISINFECTANTS AND DISINFECTION BYPRODUCTS

Pub. L. 104-182, title I, § 104(b), Aug. 6, 1996, 110 Stat. 1625, provided that: "The Administrator of the Environmental Protection Agency may use the authority of section 1412(b)(5) of the Safe Drinking Water Act [42 U.S.C. 300g-1(b)(5)] (as amended by this Act) to promulgate the Stage I and Stage II Disinfectants and Disinfection Byproducts Rules as proposed in volume 59, Federal Register, page 38668 (July 29, 1994). The considerations used in the development of the July 29, 1994, proposed national primary drinking water regulation on disinfectants and disinfection byproducts shall be treated as consistent with such section 1412(b)(5) for purposes of such Stage I and Stage II rules."

§ 300g-2. State primary enforcement responsibility

(a) In general

For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b)) that such State—

(1) has adopted drinking water regulations that are no less stringent than the national primary drinking water regulations promulgated by the Administrator under subsections (a) and (b) of section 300g-1 of this title not later than 2 years after the date on which the regulations are promulgated by the Administrator, except that the Administrator may provide for an extension of not more than 2 years if, after submission and review of appropriate, adequate documentation from the State, the Administrator determines that the extension is necessary and justified;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g-4 and 300g-5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances including earthquakes, floods, hurricanes, and other natural disasters, as appropriate;

(6) has adopted and is implementing procedures for requiring public water systems to assess options for consolidation or transfer of ownership or other actions in accordance with the regulations issued by the Administrator under section 300g-3(h)(6) of this title; and

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

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

(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State);

except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation.

(b) Regulations

(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of subsection (a) are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations

under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(c) Interim primary enforcement authority

A State that has primary enforcement authority under this section with respect to each existing national primary drinking water regulation shall be considered to have primary enforcement authority with respect to each new or revised national primary drinking water regulation during the period beginning on the effective date of a regulation adopted and submitted by the State with respect to the new or revised national primary drinking water regulation in accordance with subsection (b)(1) and ending at such time as the Administrator makes a determination under subsection (b)(2)(B) with respect to the regulation.

(July 1, 1944, ch. 373, title XIV, §1413, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1665; amended Pub. L. 99-339, title I, §101(c)(2), June 19, 1986, 100 Stat. 646; Pub. L. 104-182, title I, §§112, 113(b), Aug. 6, 1996, 110 Stat. 1633, 1635; Pub. L. 115-270, title II, §2010(b), Oct. 23, 2018, 132 Stat. 3848.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(6), (7). Pub. L. 115-270, §2010(b)(1), added par. (6) and redesignated former par. (6) as (7).

Subsec. (b)(1). Pub. L. 115-270, §2010(b)(2), struck out “of paragraphs (1), (2), (3), and (4)” after “the requirements”.

1996—Subsec. (a)(1). Pub. L. 104-182, §112(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g-1(a) and 300g-1(b) of this title;”.

Subsec. (a)(5). Pub. L. 104-182, §112(b), inserted “including earthquakes, floods, hurricanes, and other natural disasters, as appropriate” after “emergency circumstances”.

Subsec. (a)(6). Pub. L. 104-182, §113(b), added par. (6).

Subsec. (c). Pub. L. 104-182, §112(a)(2), added subsec. (c).

1986—Subsec. (a)(1). Pub. L. 99-339 substituted “are no less stringent than the national primary drinking water regulations in effect under sections 300g-1(a) and 300g-1(b) of this title” for subpars. (A) and (B) which related to stringency of State drinking water regulations between period of promulgation and effective date of national interim drinking water regulations and during the period after such effective date.

§ 300g-3. Enforcement of drinking water regulations

(a) Notice to State and public water system; issuance of administrative order; civil action

(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 300g-2(a) of this title) that any public water system—

(i) for which a variance under section 300g-4 or an exemption under section 300g-5 of this title is not in effect, does not comply with any applicable requirement, or

(ii) for which a variance under section 300g-4 or an exemption under section 300g-5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and such public water system and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time.

(B) If, beyond the thirtieth day after the Administrator's notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) requiring the public water system to comply with such applicable requirement or the Administrator shall commence a civil action under subsection (b).

(2) ENFORCEMENT IN NONPRIMACY STATES.—

(A) IN GENERAL.—If, on the basis of information available to the Administrator, the Administrator finds, with respect to a period in which a State does not have primary enforcement responsibility for public water systems, that a public water system in the State—

(i) for which a variance under section 300g-4 of this title or an exemption under section 300g-5 of this title is not in effect, does not comply with any applicable requirement; or

(ii) for which a variance under section 300g-4 of this title or an exemption under section 300g-5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant to the variance or exemption;

the Administrator shall issue an order under subsection (g) requiring the public water system to comply with the requirement, or commence a civil action under subsection (b).

(B) NOTICE.—If the Administrator takes any action pursuant to this paragraph, the Administrator shall notify an appropriate local elected official, if any, with jurisdiction over the public water system of the action prior to the time that the action is taken.

(b) Judicial determinations in appropriate Federal district courts; civil penalties, separate violations

The Administrator may bring a civil action in the appropriate United States district court to require compliance with any applicable requirement, with an order issued under subsection (g), or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 300g-4 or 300g-5 of this title if—

(1) authorized under paragraph (1) or (2) of subsection (a), or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgement as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed \$25,000 for each day in which such violation occurs.

(c) Notice to States, the Administrator, and persons served

(1) In general

Each owner or operator of a public water system shall give notice of each of the following to the persons served by the system:

(A) Notice of any failure on the part of the public water system to—

(i) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation; or

(ii) perform monitoring required by section 300j-4(a) of this title.

(B) If the public water system is subject to a variance granted under subsection (a)(1)(A), (a)(2), or (e) of section 300g-4 of this title for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 300g-5 of this title, notice of—

(i) the existence of the variance or exemption; and

(ii) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

(C) Notice of the concentration level of any unregulated contaminant for which the Administrator has required public notice pursuant to paragraph (2)(F).

(D) Notice that the public water system exceeded the lead action level under section 141.80(c) of title 40, Code of Federal Regulations (or a prescribed level of lead that the Administrator establishes for public education or notification in a successor regulation promulgated pursuant to section 300g-1 of this title).

(2) Form, manner, and frequency of notice

(A) In general

The Administrator shall, by regulation, and after consultation with the States, prescribe the manner, frequency, form, and content for giving notice under this subsection. The regulations shall—

(i) provide for different frequencies of notice based on the differences between violations that are intermittent or infrequent and violations that are continuous or frequent; and

(ii) take into account the seriousness of any potential adverse health effects that may be involved.

(B) State requirements**(i) In general**

A State may, by rule, establish alternative notification requirements—

(I) with respect to the form and content of notice given under and in a manner in accordance with subparagraph (C); and

(II) with respect to the form and content of notice given under subparagraph (E).

(ii) Contents

The alternative requirements shall provide the same type and amount of information as required pursuant to this subsection and regulations issued under subparagraph (A).

(iii) Relationship to section 300g-2

Nothing in this subparagraph shall be construed or applied to modify the requirements of section 300g-2 of this title.

(C) Notice of violations or exceedances with potential to have serious adverse effects on human health

Regulations issued under subparagraph (A) shall specify notification procedures for each violation, and each exceedance described in paragraph (1)(D), by a public water system that has the potential to have serious adverse effects on human health as a result of short-term exposure. Each notice of violation or exceedance provided under this subparagraph shall—

(i) be distributed as soon as practicable, but not later than 24 hours, after the public water system learns of the violation or exceedance;

(ii) provide a clear and readily understandable explanation of—

(I) the violation or exceedance;

(II) the potential adverse effects on human health;

(III) the steps that the public water system is taking to correct the violation or exceedance; and

(IV) the necessity of seeking alternative water supplies until the violation or exceedance is corrected;

(iii) be provided to the Administrator and the head of the State agency that has primary enforcement responsibility under section 300g-2 of this title, as applicable, as soon as practicable, but not later than 24 hours after the public water system learns of the violation or exceedance; and

(iv) as required by the State agency in general regulations of the State agency, or on a case-by-case basis after the consultation referred to in clause (iii), considering the health risks involved—

(I) be provided to appropriate media, including broadcast media;

(II) be prominently published in a newspaper of general circulation serving the area not later than 1 day after distribution of a notice pursuant to clause (i) or the date of publication of the next issue of the newspaper; or

(III) be provided by posting or door-to-door notification.

(D) Notice by the Administrator

If the State with primary enforcement responsibility or the owner or operator of a public water system has not issued a notice under subparagraph (C) for an exceedance of the lead action level under section 141.80(c) of title 40, Code of Federal Regulations (or a prescribed level of lead that the Administrator establishes for public education or notification in a successor regulation promulgated pursuant to section 300g-1 of this title) that has the potential to have serious adverse effects on human health as a result of short-term exposure, not later than 24 hours after the Administrator is notified of the exceedance, the Administrator shall issue the required notice under that subparagraph.

(E) Written notice**(i) In general**

Regulations issued under subparagraph (A) shall specify notification procedures for violations other than the violations covered by subparagraph (C). The procedures shall specify that a public water system shall provide written notice to each person served by the system by notice (I) in the first bill (if any) prepared after the date of occurrence of the violation, (II) in an annual report issued not later than 1 year after the date of occurrence of the violation, or (III) by mail or direct delivery as soon as practicable, but not later than 1 year after the date of occurrence of the violation.

(ii) Form and manner of notice

The Administrator shall prescribe the form and manner of the notice to provide a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps that the system is taking to seek alternative water supplies, if any, until the violation is corrected.

(F) Unregulated contaminants

The Administrator may require the owner or operator of a public water system to give notice to the persons served by the system of the concentration levels of an unregulated contaminant required to be monitored under section 300j-4(a) of this title.

(3) Reports**(A) Annual report by State****(i) In general**

Not later than January 1, 1998, and annually thereafter, each State that has primary enforcement responsibility under section 300g-2 of this title shall prepare, make readily available to the public, and submit to the Administrator an annual report on violations of national primary drinking water regulations by public water systems in the State, including violations with respect to (I) maximum contaminant levels, (II) treatment requirements, (III) variances and exemptions, and (IV) moni-

toring requirements determined to be significant by the Administrator after consultation with the States.

(ii) Distribution

The State shall publish and distribute summaries of the report and indicate where the full report is available for review.

(B) Annual report by Administrator

Not later than July 1, 1998, and annually thereafter, the Administrator shall prepare and make available to the public an annual report summarizing and evaluating reports submitted by States pursuant to subparagraph (A), notices submitted by public water systems serving Indian Tribes provided to the Administrator pursuant to subparagraph (C) or (E) of paragraph (2), and notices issued by the Administrator with respect to public water systems serving Indian Tribes under subparagraph (D) of that paragraph and making recommendations concerning the resources needed to improve compliance with this subchapter. The report shall include information about public water system compliance on Indian reservations and about enforcement activities undertaken and financial assistance provided by the Administrator on Indian reservations, and shall make specific recommendations concerning the resources needed to improve compliance with this subchapter on Indian reservations.

(4) Consumer confidence reports by community water systems

(A) Reports to consumers

The Administrator, in consultation with public water systems, environmental groups, public interest groups, risk communication experts, and the States, and other interested parties, shall issue regulations within 24 months after August 6, 1996, to require each community water system to mail, or provide by electronic means, to each customer of the system at least once annually a report on the level of contaminants in the drinking water purveyed by that system (referred to in this paragraph as a "consumer confidence report"). Such regulations shall provide a brief and plainly worded definition of the terms "maximum contaminant level goal", "maximum contaminant level", "variances", and "exemptions" and brief statements in plain language regarding the health concerns that resulted in regulation of each regulated contaminant. The regulations shall also include a brief and plainly worded explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water. The regulations shall also provide for an Environmental Protection Agency toll-free hotline that consumers can call for more information and explanation.

(B) Contents of report

The consumer confidence reports under this paragraph shall include, but not be limited to, each of the following:

(i) Information on the source of the water purveyed.

(ii) A brief and plainly worded definition of the terms "action level", "maximum contaminant level goal", "maximum contaminant level", "variances", and "exemptions" as provided in the regulations of the Administrator.

(iii) If any regulated contaminant is detected in the water purveyed by the public water system, a statement describing, as applicable—

(I) the maximum contaminant level goal;

(II) the maximum contaminant level;

(III) the level of the contaminant in the water system;

(IV) the action level for the contaminant; and

(V) for any contaminant for which there has been a violation of the maximum contaminant level during the year concerned, a brief statement in plain language regarding the health concerns that resulted in regulation of the contaminant, as provided by the Administrator in regulations under subparagraph (A).

(iv) Information on compliance with national primary drinking water regulations, as required by the Administrator, including corrosion control efforts, and notice if the system is operating under a variance or exemption and the basis on which the variance or exemption was granted.

(v) Information on the levels of unregulated contaminants for which monitoring is required under section 300j-4(a)(2) of this title (including levels of cryptosporidium and radon where States determine they may be found).

(vi) A statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk and that more information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency hotline.

(vii) Identification of, if any—

(I) exceedances described in paragraph (1)(D) for which corrective action has been required by the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) during the monitoring period covered by the consumer confidence report; and

(II) violations that occurred during the monitoring period covered by the consumer confidence report.

A public water system may include such additional information as it deems appropriate for public education. The Administrator may, for not more than 3 regulated contaminants other than those referred to in clause (iii)(V), require a consumer confidence report under this paragraph to include the brief statement in plain language regarding the health concerns that resulted in regulation of the contaminant or contaminants concerned, as provided by the Administrator in regulations under subparagraph (A).

(C) Coverage

The Governor of a State may determine not to apply the mailing requirement of subparagraph (A) to a community water system serving fewer than 10,000 persons. Any such system shall—

- (i) inform, in the newspaper notice required by clause (iii) or by other means, its customers that the system will not be mailing the report as required by subparagraph (A);
- (ii) make the consumer confidence report available upon request to the public; and
- (iii) publish the report referred to in subparagraph (A) annually in one or more local newspapers serving the area in which customers of the system are located.

(D) Alternative to publication

For any community water system which, pursuant to subparagraph (C), is not required to meet the mailing requirement of subparagraph (A) and which serves 500 persons or fewer, the community water system may elect not to comply with clause (i) or (iii) of subparagraph (C). If the community water system so elects, the system shall, at a minimum—

- (i) prepare an annual consumer confidence report pursuant to subparagraph (B); and
- (ii) provide notice at least once per year to each of its customers by mail, by door-to-door delivery, by posting or by other means authorized by the regulations of the Administrator that the consumer confidence report is available upon request.

(E) Alternative form and content

A State exercising primary enforcement responsibility may establish, by rule, after notice and public comment, alternative requirements with respect to the form and content of consumer confidence reports under this paragraph.

(F) Revisions**(i) Understandability and frequency**

Not later than 24 months after October 23, 2018, the Administrator, in consultation with the parties identified in subparagraph (A), shall issue revisions to the regulations issued under subparagraph (A)—

- (I) to increase—
 - (aa) the readability, clarity, and understandability of the information presented in consumer confidence reports; and
 - (bb) the accuracy of information presented, and risk communication, in consumer confidence reports; and

(II) with respect to community water systems that serve 10,000 or more persons, to require each such community water system to provide, by mail, electronic means, or other methods described in clause (ii), a consumer confidence report to each customer of the system at least biannually.

(ii) Electronic delivery

Any revision of regulations pursuant to clause (i) shall allow delivery of consumer

confidence reports by methods consistent with methods described in the memorandum “Safe Drinking Water Act–Consumer Confidence Report Rule Delivery Options” issued by the Environmental Protection Agency on January 3, 2013.

(5) Exceedance of lead level at households**(A) Strategic plan**

Not later than 180 days after December 16, 2016, the Administrator shall, in collaboration with owners and operators of public water systems and States, establish a strategic plan for how the Administrator, a State with primary enforcement responsibility, and owners and operators of public water systems shall provide targeted outreach, education, technical assistance, and risk communication to populations affected by the concentration of lead in a public water system, including dissemination of information described in subparagraph (C).

(B) EPA initiation of notice**(i) Forwarding of data by employee of the Agency**

If the Agency develops, or receives from a source other than a State or a public water system, data that meets the requirements of section 300g-1(b)(3)(A)(ii) of this title that indicates that the drinking water of a household served by a public water system contains a level of lead that exceeds the lead action level under section 141.80(c) of title 40, Code of Federal Regulations (or a prescribed level of lead that the Administrator establishes for public education or notification in a successor regulation promulgated pursuant to section 300g-1 of this title) (referred to in this paragraph as an “affected household”), the Administrator shall require an appropriate employee of the Agency to forward the data, and information on the sampling techniques used to obtain the data, to the owner or operator of the public water system and the State in which the affected household is located within a time period determined by the Administrator.

(ii) Dissemination of information by owner or operator

The owner or operator of a public water system shall disseminate to affected households the information described in subparagraph (C) within a time period established by the Administrator, if the owner or operator—

- (I) receives data and information under clause (i); and
- (II) has not, since the date of the test that developed the data, notified the affected households—

(aa) with respect to the concentration of lead in the drinking water of the affected households; and

(bb) that the concentration of lead in the drinking water of the affected households exceeds the lead action level under section 141.80(c) of title 40,

Code of Federal Regulations (or a prescribed level of lead that the Administrator establishes for public education or notification in a successor regulation promulgated pursuant to section 300g-1 of this title).

(iii) Consultation

(I) Deadline

If the owner or operator of the public water system does not disseminate to the affected households the information described in subparagraph (C) as required under clause (ii) within the time period established by the Administrator, not later than 24 hours after the Administrator becomes aware of the failure by the owner or operator of the public water system to disseminate the information, the Administrator shall consult, within a period not to exceed 24 hours, with the applicable Governor to develop a plan, in accordance with the strategic plan, to disseminate the information to the affected households not later than 24 hours after the end of the consultation period.

(II) Delegation

The Administrator may only delegate the duty to consult under subclause (I) to an employee of the Agency who, as of the date of the delegation, works in the Office of Water at the headquarters of the Agency.

(iv) Dissemination by Administrator

The Administrator shall, as soon as practicable, disseminate to affected households the information described in subparagraph (C) if—

(I) the owner or operator of the public water system does not disseminate the information to the affected households within the time period determined by the Administrator, as required by clause (ii); and

(II)(aa) the Administrator and the applicable Governor do not agree on a plan described in clause (iii)(I) during the consultation period under that clause; or

(bb) the applicable Governor does not disseminate the information within 24 hours after the end of the consultation period.

(C) Information required

The information described in this subparagraph includes—

(i) a clear explanation of the potential adverse effects on human health of drinking water that contains a concentration of lead that exceeds the lead action level under section 141.80(c) of title 40, Code of Federal Regulations (or a prescribed level of lead that the Administrator establishes for public education or notification in a successor regulation promulgated pursuant to section 300g-1 of this title);

(ii) the steps that the owner or operator of the public water system is taking to mitigate the concentration of lead; and

(iii) the necessity of seeking alternative water supplies until the date on which the concentration of lead is mitigated.

(6) Privacy

Any notice to the public or an affected household under this subsection shall protect the privacy of individual customer information.

(d) Notice of noncompliance with secondary drinking water regulations

Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) State authority to adopt or enforce laws or regulations respecting drinking water regulations or public water systems unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(f) Notice and public hearing; availability of recommendations transmitted to State and public water system

If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1)) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

(g) Administrative order requiring compliance; notice and hearing; civil penalty; civil actions

(1) In any case in which the Administrator is authorized to bring a civil action under this section or under section 300j-4 of this title with re-

spect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.

(2) An order issued under this subsection shall not take effect, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the order. A copy of any order issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than \$25,000 per day of violation.

(B) In a case in which a civil penalty sought by the Administrator under this paragraph does not exceed \$5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a public hearing (unless the person against whom the penalty is assessed requests a hearing on the record in accordance with section 554 of title 5). In a case in which a civil penalty sought by the Administrator under this paragraph exceeds \$5,000, but does not exceed \$25,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.

(C) Whenever any civil penalty sought by the Administrator under this subsection for a violation of an applicable requirement exceeds \$25,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28).

(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(h) Consolidation incentive

(1) In general

An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility under section 300g-2 of this title) or to the Administrator (if the State does not have primary enforcement responsibility) a plan (including specific measures and schedules) for—

(A) the physical consolidation of the system with 1 or more other systems;

(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems;

(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality; or

(D) entering into a contractual agreement for significant management or administrative functions of the system to correct violations identified in the plan.

(2) Consequences of approval

If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

(3) Authority for mandatory assessment

(A) Authority

A State with primary enforcement responsibility or the Administrator (if the State does not have primary enforcement responsibility) may require the owner or operator of a public water system to assess options for consolidation, or transfer of ownership of the system, as described in paragraph (1), or other actions expected to achieve compliance with national primary drinking water regulations described in clause (i)(I), if—

(i) the public water system—

(I) has repeatedly violated one or more national primary drinking water regulations and such repeated violations are likely to adversely affect human health; and

(II)(aa) is unable or unwilling to take feasible and affordable actions, as determined by the State with primary enforcement responsibility or the Administrator (if the State does not have primary enforcement responsibility), that will result in the public water system complying with the national primary drinking water regulations described in subclause (I), including accessing technical assistance and financial assistance through the State loan fund pursuant to section 300j-12 of this title; or

(bb) has already undertaken actions described in item (aa) without achieving compliance;

(ii) such consolidation, transfer, or other action is feasible; and

(iii) such consolidation, transfer, or other action could result in greater compliance with national primary drinking water regulations.

(B) Tailoring of assessments

Requirements for any assessment to be conducted pursuant to subparagraph (A) shall be tailored with respect to the size, type, and characteristics, of the public water system to be assessed.

(C) Approved entities

An assessment conducted pursuant to subparagraph (A) may be conducted by an entity approved by the State requiring such assessment (or the Administrator, if the State does not have primary enforcement responsi-

bility), which may include such State (or the Administrator, as applicable), the public water system, or a third party.

(D) Burden of assessments

It is the sense of Congress that any assessment required pursuant to subparagraph (A) should not be overly burdensome on the public water system that is assessed.

(4) Financial assistance

Notwithstanding section 300j-12(a)(3) of this title, a public water system undertaking consolidation or transfer of ownership or other actions pursuant to an assessment completed under paragraph (3) may receive a loan described in section 300j-12(a)(2)(A) of this title to carry out such consolidation, transfer, or other action.

(5) Protection of nonresponsible system

(A) Identification of liabilities

(i) In general

An owner or operator of a public water system that submits a plan pursuant to paragraph (1) based on an assessment conducted with respect to such public water system under paragraph (3) shall identify as part of such plan—

(I) any potential and existing liability for penalties and damages arising from each specific violation identified in the plan of which the owner or operator is aware; and

(II) any funds or other assets that are available to satisfy such liability, as of the date of submission of such plan, to the public water system that committed such violation.

(ii) Inclusion

In carrying out clause (i), the owner or operator shall take reasonable steps to ensure that all potential and existing liabilities for penalties and damages arising from each specific violation identified in the plan are identified.

(B) Reservation of funds

A public water system that, consistent with the findings of an assessment conducted pursuant to paragraph (3), has completed the actions under a plan submitted and approved pursuant to this subsection shall not be liable under this subchapter for a violation of this subchapter identified in the plan, except to the extent to which funds or other assets are identified pursuant to subparagraph (A)(i)(II) as available to satisfy such liability.

(6) Regulations

Not later than 2 years after October 23, 2018, the Administrator shall promulgate regulations to implement paragraphs (3), (4), and (5).

(i) “Applicable requirement” defined

In this section, the term “applicable requirement” means—

(1) a requirement of section 300g-1, 300g-3, 300g-4, 300g-5, 300g-6, 300i-2, 300j, or 300j-4 of this title;

(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 300g-2 of this title have been satisfied, or an applicable State program approved pursuant to this part.

(j) Improved accuracy and availability of compliance monitoring data

(1) Strategic plan

Not later than 1 year after October 23, 2018, the Administrator, in coordination with States (including States without primary enforcement responsibility under section 300g-2 of this title), public water systems, and other interested stakeholders, shall develop and provide to Congress a strategic plan for improving the accuracy and availability of monitoring data collected to demonstrate compliance with national primary drinking water regulations and submitted—

(A) by public water systems to States; or

(B) by States to the Administrator.

(2) Evaluation

In developing the strategic plan under paragraph (1), the Administrator shall evaluate any challenges faced—

(A) in ensuring the accuracy and integrity of submitted data described in paragraph (1);

(B) by States and public water systems in implementing an electronic system for submitting such data, including the technical and economic feasibility of implementing such a system; and

(C) by users of such electronic systems in being able to access such data.

(3) Findings and recommendations

The Administrator shall include in the strategic plan provided to Congress under paragraph (1)—

(A) a summary of the findings of the evaluation under paragraph (2); and

(B) recommendations on practicable, cost-effective methods and means that can be employed to improve the accuracy and availability of submitted data described in paragraph (1).

(4) Consultation

In developing the strategic plan under paragraph (1), the Administrator may, as appropriate, consult with States or other Federal agencies that have experience using practicable methods and means to improve the accuracy and availability of submitted data described in such paragraph.

(July 1, 1944, ch. 373, title XIV, §1414, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1666; amended Pub. L. 95-190, §12(b), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 99-339, title I, §§102, 103, June 19, 1986, 100 Stat. 647, 648; Pub. L. 104-182, title I, §§113(a), 114(a), Aug. 6, 1996, 110 Stat. 1634, 1636; Pub. L. 107-188, title IV, §403(1), June 12, 2002, 116 Stat. 687; Pub. L. 114-322, title II, §2106(a), Dec. 16, 2016, 130 Stat. 1722; Pub. L. 115-270, title II, §§2008-2010(a), 2011, Oct. 23, 2018, 132 Stat. 3846, 3847, 3849.)

Editorial Notes

AMENDMENTS

2018—Subsec. (c)(4)(A). Pub. L. 115-270, §2008(1), (2), substituted “Reports” for “Annual reports” in heading and inserted “, or provide by electronic means,” after “to mail” in text.

Subsec. (c)(4)(B)(iv). Pub. L. 115-270, §2008(3)(A), substituted “the Administrator, including corrosion control efforts, and” for “the Administrator, and”.

Subsec. (c)(4)(B)(vii). Pub. L. 115-270, §2008(3)(B), which directed amendment of subpar. (B) by adding cl. (vii) at the end, was executed by adding cl. (vii) after cl. (vi) and before concluding provisions, to reflect the probable intent of Congress.

Subsec. (c)(4)(F). Pub. L. 115-270, §2008(4), added subpar. (F).

Subsec. (h)(1)(D). Pub. L. 115-270, §2009(a), added subpar. (D).

Subsec. (h)(3) to (6). Pub. L. 115-270, §2010(a), added pars. (3) to (6).

Subsec. (i)(1). Pub. L. 115-270, §2009(b), inserted a comma after “300g-6”.

Subsec. (j). Pub. L. 115-270, §2011, added subsec. (j).

2016—Subsec. (c). Pub. L. 114-322, §2106(a)(1), substituted “Notice to States, the Administrator, and” for “Notice to” in heading.

Subsec. (c)(1)(C). Pub. L. 114-322, §2106(a)(2)(A), substituted “paragraph (2)(F)” for “paragraph (2)(E)”.

Subsec. (c)(1)(D). Pub. L. 114-322, §2106(a)(2)(B), added subpar. (D).

Subsec. (c)(2)(B)(i)(II). Pub. L. 114-322, §2106(a)(3)(A), substituted “subparagraph (E)” for “subparagraph (D)”.

Subsec. (c)(2)(C). Pub. L. 114-322, §2106(a)(3)(B)(i), (ii), substituted, in heading, “Notice of violations or exceedances” for “Violations” and, in introductory provisions, “each violation, and each exceedance described in paragraph (1)(D),” for “each violation” and “notice of violation or exceedance” for “notice of violation”.

Subsec. (c)(2)(C)(i). Pub. L. 114-322, §2106(a)(3)(B)(iii), added cl. (i) and struck out former cl. (i) which read as follows: “be distributed as soon as practicable after the occurrence of the violation, but not later than 24 hours after the occurrence of the violation;”.

Subsec. (c)(2)(C)(ii). Pub. L. 114-322, §2106(a)(3)(B)(iv), inserted “or exceedance” after “violation” wherever appearing.

Subsec. (c)(2)(C)(iii). Pub. L. 114-322, §2106(a)(3)(B)(v), added cl. (iii) and struck out former cl. (iii) which read as follows: “be provided to the Administrator or the head of the State agency that has primary enforcement responsibility under section 300g-2 of this title as soon as practicable, but not later than 24 hours after the occurrence of the violation; and”.

Subsec. (c)(2)(C)(iv)(I). Pub. L. 114-322, §2106(a)(3)(B)(vi)(I), substituted “media, including broadcast media” for “broadcast media”.

Subsec. (c)(2)(C)(iv)(II). Pub. L. 114-322, §2106(a)(3)(B)(vi)(II), struck out “in lieu of notification by means of broadcast media or newspaper” after “notification”.

Subsec. (c)(2)(D) to (F). Pub. L. 114-322, §2106(a)(3)(C), (D), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (c)(3)(B). Pub. L. 114-322, §2106(a)(4), substituted “subparagraph (A),” for “subparagraph (A) and” and “subparagraph (C) or (E) of paragraph (2), and notices issued by the Administrator with respect to public water systems serving Indian Tribes under subparagraph (D) of that paragraph” for “subparagraph (C) or (D) of paragraph (2)”.

Subsec. (c)(4)(B). Pub. L. 114-322, §2106(a)(5)(C), substituted “clause (iii)(V)” for “subclause (IV) of clause (iii)” in concluding provisions.

Subsec. (c)(4)(B)(ii). Pub. L. 114-322, §2106(a)(5)(A), substituted “the terms ‘action level,’” for “the terms”.

Subsec. (c)(4)(B)(iii). Pub. L. 114-322, §2106(a)(5)(B), added cl. (iii) and struck out former cl. (iii) which read

as follows: “If any regulated contaminant is detected in the water purveyed by the public water system, a statement setting forth (I) the maximum contaminant level goal, (II) the maximum contaminant level, (III) the level of such contaminant in such water system, and (IV) for any regulated contaminant for which there has been a violation of the maximum contaminant level during the year concerned, the brief statement in plain language regarding the health concerns that resulted in regulation of such contaminant, as provided by the Administrator in regulations under subparagraph (A).”

Subsec. (c)(5), (6). Pub. L. 114-322, §2106(a)(6), added pars. (5) and (6).

2002—Subsec. (i)(1). Pub. L. 107-188 inserted “300i-2” after “300g-6”.

1996—Subsec. (a)(1)(A). Pub. L. 104-182, §113(a)(1)(A)(i)(II), substituted “with the requirement” for “with such regulation or requirement” in concluding provisions.

Subsec. (a)(1)(A)(i). Pub. L. 104-182, §113(a)(1)(A)(i)(I), substituted “any applicable requirement” for “any national primary drinking water regulation in effect under section 300g-1 of this title”.

Subsec. (a)(1)(B). Pub. L. 104-182, §113(a)(1)(A)(ii), substituted “such applicable requirement” for “such regulation or requirement”.

Subsec. (a)(2). Pub. L. 104-182, §113(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: “Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

“(A) for which a variance under section 300g-4(a)(2) or an exemption under section 300g-5(f) of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g-1 of this title, or

“(B) for which a variance under section 300g-4(a)(2) or an exemption under section 300g-5(f) of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto, the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section.”

Subsec. (b). Pub. L. 104-182, §113(a)(2), substituted “any applicable requirement” for “a national primary drinking water regulation” in introductory provisions.

Subsec. (c). Pub. L. 104-182, §114(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to notice of owner or operator of public water system to persons served, regulations for form, manner, and frequency of notice, amendment of regulations to provide different types and frequencies of notice, and penalties.

Subsec. (g)(1). Pub. L. 104-182, §113(a)(3)(A), substituted “applicable requirement” for “regulation, schedule, or other requirement” in two places.

Subsec. (g)(2). Pub. L. 104-182, §113(a)(3)(B), substituted “effect, in the case” for “effect until after notice and opportunity for public hearing and, in the case” and “regarding the order” for “regarding the proposed order” and struck out “proposed to be” after “A copy of any order”.

Subsec. (g)(3)(B). Pub. L. 104-182, §113(a)(3)(C)(i), added subpar. (B) and struck out former subpar. (B) which read as follows: “Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of \$5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.”

Subsec. (g)(3)(C). Pub. L. 104-182, §113(a)(3)(C)(ii), substituted “subsection for a violation of an applicable requirement exceeds \$25,000” for “paragraph exceeds \$5,000”.

Subsecs. (h), (i). Pub. L. 104-182, §113(a)(4), added subsecs. (h) and (i).

1986—Pub. L. 99-339, §102(d)(2), substituted “Enforcement” for “Failure of State to assure enforcement” in section catchline.

Subsec. (a)(1)(A). Pub. L. 99-339, §102(a), inserted “and such public water system” after “notify the State” in provisions following cl. (ii).

Subsec. (a)(1)(B). Pub. L. 99-339, §102(b)(1), amended subpar. (B) generally, substituting provisions which relate to issuance of an order to public water system to comply with regulations, or commencement of civil action if the State has not commenced appropriate enforcement action for provisions which related to public notice of noncompliance and commencement of civil action by Administrator if State failed to take steps to obtain compliance by public water system.

Subsec. (a)(2). Pub. L. 99-339, §102(b)(2), substituted “the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section” for “he may commence a civil action under subsection (b) of this section”.

Subsec. (b). Pub. L. 99-339, §102(c), inserted “, with an order issued under subsection (g),” before “or with any schedule” and substituted “there has been a violation” for “there has been a willful violation” and “\$25,000” for “\$5,000”.

Subsec. (c). Pub. L. 99-339, §103, substituted provisions relating to amendment of regulations within fifteen months after June 19, 1986, to provide different types and frequencies of notice based on the differences between violations which are intermittent or continuous, manner and content of notices, notice required to public served by owner or operator of public water system, and civil penalty of \$25,000, for provisions relating to form, manner, and frequency of notice based on three month billing period for water bills, notice required to public served by owner or operator of public water system, and civil penalty of \$5,000.

Subsec. (g). Pub. L. 99-339, §102(d), added subsec. (g).
1977—Subsec. (c). Pub. L. 95-190 inserted provisions relating to frequency of required notice, and notice respecting contaminant levels, and substituted “issued under this subsection” for “thereunder”.

§ 300g-4. Variances

(a) Characteristics of raw water sources; specific treatment technique; notice to Administrator, reasons for variance; compliance, enforcement; approval or revision of schedules and revocation of variances; review of variances and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting variances or failing to prescribe schedules; State corrective action; authority of Administrator in a State without primary enforcement responsibility; alternative treatment techniques

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install

the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system. The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe at the¹ time the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such additional control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of a national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the

¹ So in original.

raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g-3 of this title as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Reg-

ister the results of his review together with findings responsive to comments submitted in connection with such review.

(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Administrator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance or schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of

a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Enforcement of schedule or other requirement

Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) is conditioned may be enforced under section 300g-3 of this title as if such schedule or other requirement was part of a national primary drinking water regulation.

(c) Applications for variances; regulations: reasonable time for acting

If an application for a variance under subsection (a) is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(d) "Treatment technique requirement" defined

For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g-1(b) of this title.

(e) Small system variances

(1) In general

A State exercising primary enforcement responsibility for public water systems under section 300g-2 of this title (or the Administrator in nonprimacy States) may grant a variance under this subsection for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to—

(A) public water systems serving 3,300 or fewer persons; and

(B) with the approval of the Administrator pursuant to paragraph (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons,

if the variance meets each requirement of this subsection.

(2) Availability of variances

A public water system may receive a variance pursuant to paragraph (1), if—

(A) the Administrator has identified a variance technology under section 300g-1(b)(15) of this title that is applicable to the size and source water quality conditions of the public water system;

(B) the public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Ad-

ministrator, such treatment technology, treatment technique, or other means; and

(C) the State in which the system is located determines that the conditions of paragraph (3) are met.

(3) Conditions for granting variances

A variance under this subsection shall be available only to a system—

(A) that cannot afford to comply, in accordance with affordability criteria established by the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title), with a national primary drinking water regulation, including compliance through—

(i) treatment;

(ii) alternative source of water supply; or

(iii) restructuring or consolidation (unless the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title) makes a written determination that restructuring or consolidation is not practicable); and

(B) for which the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title) determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

(4) Compliance schedules

A variance granted under this subsection shall require compliance with the conditions of the variance not later than 3 years after the date on which the variance is granted, except that the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title) may allow up to 2 additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Administrator (or the State) determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to section 300j-12 of this title or any other Federal or State program.

(5) Duration of variances

The Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title) shall review each variance granted under this subsection not less often than every 5 years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

(6) Ineligibility for variances

A variance shall not be available under this subsection for—

(A) any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drink-

ing water regulation was promulgated prior to January 1, 1986; or

(B) a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(7) Regulations and guidance

(A) In general

Not later than 2 years after August 6, 1996, and in consultation with the States, the Administrator shall promulgate regulations for variances to be granted under this subsection. The regulations shall, at a minimum, specify—

(i) procedures to be used by the Administrator or a State to grant or deny variances, including requirements for notifying the Administrator and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

(ii) requirements for the installation and proper operation of variance technology that is identified (pursuant to section 300g-1(b)(15) of this title) for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

(iii) eligibility criteria for a variance for each national primary drinking water regulation, including requirements for the quality of the source water (pursuant to section 300g-1(b)(15)(A) of this title); and

(iv) information requirements for variance applications.

(B) Affordability criteria

Not later than 18 months after August 6, 1996, the Administrator, in consultation with the States and the Rural Utilities Service of the Department of Agriculture, shall publish information to assist the States in developing affordability criteria. The affordability criteria shall be reviewed by the States not less often than every 5 years to determine if changes are needed to the criteria.

(8) Review by the Administrator

(A) In general

The Administrator shall periodically review the program of each State that has primary enforcement responsibility for public water systems under section 300g-2 of this title with respect to variances to determine whether the variances granted by the State comply with the requirements of this subsection. With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State.

(B) Notice and publication

If the Administrator determines that variances granted by a State are not in compliance with affordability criteria developed

by the State and the requirements of this subsection, the Administrator shall notify the State in writing of the deficiencies and make public the determination.

(9) Approval of variances

A State proposing to grant a variance under this subsection to a public water system serving more than 3,300 and fewer than 10,000 persons shall submit the variance to the Administrator for review and approval prior to the issuance of the variance. The Administrator shall approve the variance if it meets each of the requirements of this subsection. The Administrator shall approve or disapprove the variance within 90 days. If the Administrator disapproves a variance under this paragraph, the Administrator shall notify the State in writing of the reasons for disapproval and the variance may be resubmitted with modifications to address the objections stated by the Administrator.

(10) Objections to variances

(A) By the Administrator

The Administrator may review and object to any variance proposed to be granted by a State, if the objection is communicated to the State not later than 90 days after the State proposes to grant the variance. If the Administrator objects to the granting of a variance, the Administrator shall notify the State in writing of each basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with this subsection.

(B) Petition by consumers

Not later than 30 days after a State exercising primary enforcement responsibility for public water systems under section 300g-2 of this title proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance. The Administrator shall respond to the petition and determine whether to object to the variance under subparagraph (A) not later than 60 days after the receipt of the petition.

(C) Timing

No variance shall be granted by a State until the later of the following:

(i) 90 days after the State proposes to grant a variance.

(ii) If the Administrator objects to the variance, the date on which the State makes the recommended modifications or responds in writing to each objection.

(July 1, 1944, ch. 373, title XIV, §1415, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1669; amended Pub. L. 99-339, title I, §104, June 19, 1986, 100 Stat. 649; Pub. L. 104-182, title I,

§§102(c)(1), 115, 116, title V, §501(a)(3), Aug. 6, 1996, 110 Stat. 1621, 1641, 1691.)

Editorial Notes

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104-182, §501(a)(3), inserted “the” before “time the variance is granted,” in introductory provisions.

Pub. L. 104-182, §115, in second sentence, substituted “be issued to a system on condition that the system install” for “only be issued to a system after the system’s application of” and inserted “, and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system” after “(taking costs into consideration)”.

Subsec. (d). Pub. L. 104-182, §102(c)(1), substituted “section 300g-1(b)” for “section 300g-1(b)(3)”.

Subsec. (e). Pub. L. 104-182, §116, added subsec. (e).

1986—Subsec. (a)(1)(A). Pub. L. 99-339, §104(1)-(3), substituted “such drinking water regulation. A variance may only be issued to a system after the system’s application” for “such drinking water regulation despite application”, struck out “generally” after “finds are”, inserted provisions relating to proposal and promulgation by Administrator of a finding on best available technology, treatment techniques or other means available for each contaminant at time of proposal and promulgation of maximum contaminant levels, and substituted “at the time” for “within one year of the date”.

Subsec. (a)(1)(A)(ii). Pub. L. 99-339, §104(4), substituted “water system of such additional control” for “water system of such control”.

§ 300g-5. Exemptions

(a) Requisite findings

A State which has primary enforcement responsibility may exempt any public water system within the State’s jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

(1) due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j-12(d) of this title), the public water system is unable to comply with such contaminant level or treatment technique requirement, or to implement measures to develop an alternative source of water supply,

(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system,

(3) the granting of the exemption will not result in an unreasonable risk to health;¹ and

(4) management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this subchapter or, if compliance cannot be achieved, improve the quality of the drinking water.

¹ So in original. The semicolon probably should be a comma.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1) If a State grants a public water system an exemption under subsection (a), the State shall prescribe, at the time the exemption is granted, a schedule for—

(A) compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than 3 years after the otherwise applicable compliance date established in section 300g-1(b)(10) of this title.

(B) No exemption shall be granted unless the public water system establishes that—

(i) the system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to section 300g-1(b)(10) of this title;

(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to section 300j-12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption; or

(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and

the system is taking all practicable steps to meet the standard.

(C) In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or (ii) of subparagraph (B) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).

(D) LIMITATION.—A public water system may not receive an exemption under this section if the system was granted a variance under section 300g-4(e) of this title.

(3) Each public water system's exemption granted by a State under subsection (a) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 300g-3 of this title as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) or the schedule is revised by the Administrator under such subsection.

(c) Notice to Administrator; reasons for exemption

Each State which grants an exemption under subsection (a) shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) before the exemption may be granted) and document the need for the exemption.

(d) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules; State corrective action

(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review, together with findings responsive to comments submitted in connection with such review.

(2)(A) If the Administrator finds that a State has, in a substantial number of instances,

abused its discretion in granting exemptions under subsection (a) or failed to prescribe schedules in accordance with subsection (b), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—

- (i) identify each exempt public water system with respect to which the finding was made,
- (ii) specify the reasons for the finding, and
- (iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall rescind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) "Treatment technique requirement" defined

For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g-1(b) of this title.

(f) Authority of Administrator in a State without primary enforcement responsibility

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and

treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) Applications for exemptions; regulations; reasonable time for acting

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(July 1, 1944, ch. 373, title XIV, §1416, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1672; amended Pub. L. 95-190, §10(a), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 96-502, §§1, 4(b), Dec. 5, 1980, 94 Stat. 2737, 2738; Pub. L. 99-339, title I, §§101(c)(4), 105, June 19, 1986, 100 Stat. 646, 649; Pub. L. 104-182, title I, §117(a), Aug. 6, 1996, 110 Stat. 1644.)

Editorial Notes

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-182, §117(a)(1), inserted “, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j-12(d) of this title” after “(which may include economic factors” and “or to implement measures to develop an alternative source of water supply,” after “treatment technique requirement.”

Subsec. (a)(4). Pub. L. 104-182, §117(a)(2), added par. (4).

Subsec. (b)(1)(A). Pub. L. 104-182, §117(a)(3), substituted “(including increments of progress or measures to develop an alternative source of water supply)” for “(including increments of progress)” and “requirement or treatment” for “requirement and treatment”.

Subsec. (b)(2)(A). Pub. L. 104-182, §117(a)(4)(A), substituted “not later than 3 years after the otherwise applicable compliance date established in section 300g-1(b)(10) of this title.” for “(except as provided in subparagraph (B))—

“(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under section 300g-1(a) of this title, not later than 12 months after June 19, 1986; and

“(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by national primary drinking water regulations, other than a regulation referred to in section 300g-1(a) of this title, 12 months after the date of the issuance of the exemption.”

Subsec. (b)(2)(B). Pub. L. 104-182, §117(a)(4)(A), substituted “No exemption shall be granted unless” for “The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if” in introductory provisions.

Subsec. (b)(2)(B)(i). Pub. L. 104-182, §117(a)(4)(B), substituted “prior to the date established pursuant to section 300g-1(b)(10) of this title” for “within the period of such exemption”.

Subsec. (b)(2)(B)(ii). Pub. L. 104-182, §117(a)(4)(C), inserted “or assistance pursuant to section 300j-12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption” after “such financial assistance”.

Subsec. (b)(2)(C). Pub. L. 104-182, §117(a)(4)(D), substituted “a population of 3,300” for “500 service connections” and inserted “, but not to exceed a total of 6 years,” after “for one or more additional 2-year periods”.

Subsec. (b)(2)(D). Pub. L. 104-182, §117(a)(4)(E), added subpar. (D).

1986—Subsec. (b)(1). Pub. L. 99-339, §105(a)(1), substituted “at the time” for “within one year of the date”.

Subsec. (b)(2)(A)(i). Pub. L. 99-339, §105(a)(2), struck out “interim” before “national primary” and substituted “not later than 12 months after June 19, 1986” for “not later than January 1, 1984”.

Subsec. (b)(2)(A)(ii). Pub. L. 99-339, §105(a)(3), struck out “revised” before “national primary” and substituted “other than a regulation referred to in section 300g-1(a) of this title, 12 months after the date of the issuance of the exemption” for “not later than seven years after the date such requirement takes effect”.

Subsec. (b)(2)(B). Pub. L. 99-339, §105(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

“(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1986; and

“(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.”

Subsec. (b)(2)(C). Pub. L. 99-339, §105(a)(4), added subpar. (C).

Subsec. (e). Pub. L. 99-339, §101(c)(4), substituted “300g-1(b)” for “300g-1(b)(3)”.

1980—Subsec. (a)(2). Pub. L. 96-502, §4(b), substituted “treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system, and” for “treatment technique requirement, and”.

Subsec. (b)(2)(A)(i). Pub. L. 96-502, §1, substituted “January 1, 1984” for “January 1, 1981”.

Subsec. (b)(2)(B)(i). Pub. L. 96-502, §1, substituted “January 1, 1986” for “January 1, 1983”.

1977—Subsec. (b)(1). Pub. L. 95-190 substituted “contaminant” for “containment” wherever appearing.

§ 300g-6. Prohibition on use of lead pipes, solder, and flux

(a) In general

(1) Prohibitions

(A) In general

No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 19, 1986, in the installation or repair of—

(i) any public water system; or

(ii) any plumbing in a residential or non-residential facility providing water for human consumption,

that is not lead free (within the meaning of subsection (d)).

(B) Leaded joints

Subparagraph (A) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Public notice requirements**(A) In general**

Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

- (i) The lead content in the construction materials of the public water distribution system.
- (ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

(B) Contents of notice

Notice under this paragraph shall provide a clear and readily understandable explanation of—

- (i) the potential sources of lead in the drinking water,
- (ii) potential adverse health effects,
- (iii) reasonably available methods of mitigating known or potential lead content in drinking water,
- (iv) any steps the system is taking to mitigate lead content in drinking water, and
- (v) the necessity for seeking alternative water supplies, if any.

(3) Unlawful acts

Effective 2 years after August 6, 1996, it shall be unlawful—

- (A) for any person to introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing;
- (B) for any person engaged in the business of selling plumbing supplies, except manufacturers, to sell solder or flux that is not lead free; or
- (C) for any person to introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(4) Exemptions

The prohibitions in paragraphs (1) and (3) shall not apply to—

- (A) pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or
- (B) toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, fire hydrants, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.

(b) State enforcement**(1) Enforcement of prohibition**

The requirements of subsection (a)(1) shall be enforced in all States effective 24 months after June 19, 1986. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) Enforcement of public notice requirements

The requirements of subsection (a)(2) shall apply in all States effective 24 months after June 19, 1986.

(c) Penalties

If the Administrator determines that a State is not enforcing the requirements of subsection (a) as required pursuant to subsection (b), the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 300j-2(a) of this title.

(d) Definition of lead free**(1) In general**

For the purposes of this section, the term "lead free" means—

- (A) not containing more than 0.2 percent lead when used with respect to solder and flux; and
- (B) not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

(2) Calculation

The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with paragraph (1)(B). For lead content of materials that are provided as a range, the maximum content of the range shall be used.

(e) Plumbing fittings and fixtures**(1) In general**

The Administrator shall provide accurate and timely technical information and assistance to qualified third-party certifiers in the development of voluntary standards and testing protocols for the leaching of lead from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion.

(2) Standards**(A) In general**

If a voluntary standard for the leaching of lead is not established by the date that is 1

year after August 6, 1996, the Administrator shall, not later than 2 years after August 6, 1996, promulgate regulations setting a health-effects-based performance standard establishing maximum leaching levels from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion. The standard shall become effective on the date that is 5 years after the date of promulgation of the standard.

(B) Alternative requirement

If regulations are required to be promulgated under subparagraph (A) and have not been promulgated by the date that is 5 years after August 6, 1996, no person may import, manufacture, process, or distribute in commerce a new plumbing fitting or fixture, intended by the manufacturer to dispense water for human ingestion, that contains more than 4 percent lead by dry weight.

(f) Public education

(1) In general

The Administrator shall make information available to the public regarding lead in drinking water, including information regarding—

(A) risks associated with lead in drinking water;

(B) the conditions that contribute to drinking water containing lead in a residence;

(C) steps that States, public water systems, and consumers can take to reduce the risks of lead in drinking water; and

(D) the availability of additional resources that consumers can use to minimize lead exposure, including information on sampling for lead in drinking water.

(2) Vulnerable populations

In making information available to the public under this subsection, the Administrator shall, subject to the availability of appropriations, carry out targeted outreach strategies that focus on educating groups within the general population that may be at greater risk than the general population of adverse health effects from exposure to lead in drinking water.

(July 1, 1944, ch. 373, title XIV, §1417, as added Pub. L. 99-339, title I, §109(a), June 19, 1986, 100 Stat. 651; amended Pub. L. 104-182, title I, §118, title V, §501(f)(1), Aug. 6, 1996, 110 Stat. 1645, 1691; Pub. L. 111-380, §2(a), Jan. 4, 2011, 124 Stat. 4131; Pub. L. 113-64, §2, Dec. 20, 2013, 127 Stat. 668; Pub. L. 114-322, title II, §2106(b), Dec. 16, 2016, 130 Stat. 1726.)

Editorial Notes

AMENDMENTS

2016—Subsec. (f). Pub. L. 114-322 added subsec. (f).

2013—Subsec. (a)(4)(B). Pub. L. 113-64 inserted “fire hydrants,” after “shower valves.”

2011—Subsec. (a)(4). Pub. L. 111-380, §2(a)(1), added par. (4).

Subsec. (d). Pub. L. 111-380, §2(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) defined “lead free” when used with respect to solders and flux, pipes and pipe fittings, and plumbing fittings and fixtures.

1996—Pub. L. 104-182, §501(f)(1), made technical amendment to section catchline and subsec. (a) designation.

Subsec. (a)(1). Pub. L. 104-182, §118(1), substituted “Prohibitions” for “Prohibition” in heading and amended text generally. Prior to amendment, text read as follows: “Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

“(A) any public water system, or

“(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system, shall be lead free (within the meaning of subsection (d) of this section). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.”

Subsec. (a)(2)(A). Pub. L. 104-182, §118(2), inserted “owner or operator of a” after “Each” in introductory provisions.

Subsec. (a)(3). Pub. L. 104-182, §118(3), added par. (3).

Subsec. (d)(3). Pub. L. 104-182, §118(4), added par. (3).

Subsec. (e). Pub. L. 104-182, §118(5), added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-380, §2(b), Jan. 4, 2011, 124 Stat. 4132, provided that: “The provisions of subsections (a)(4) and (d) of section 1417 of the Safe Drinking Water Act [42 U.S.C. 300g-6(a)(4), (d)], as added by this section, apply beginning on the day that is 36 months after the date of the enactment of this Act [Jan. 4, 2011].”

EVALUATION OF SOURCES OF LEAD IN WATER DISTRIBUTION SYSTEMS AND ALTERNATE ROUTING SYSTEMS

Pub. L. 113-64, §3, Dec. 20, 2013, 127 Stat. 668, provided that: “The Administrator of the Environmental Protection Agency shall—

“(1) consult with and seek the advice of the National Drinking Water Advisory Council on potential changes to the regulations pertaining to lead under the Safe Drinking Water Act (42 U.S.C. 300f et seq.); and

“(2) request the Council to consider sources of lead throughout drinking water distribution systems, including through components used to reroute drinking water during distribution system repairs.”

NOTIFICATION TO STATES

Pub. L. 99-339, title I, §109(b), June 19, 1986, 100 Stat. 652, provided that: “The Administrator of the Environmental Protection Agency shall notify all States with respect to the requirements of section 1417 of the Public Health Service Act [42 U.S.C. 300g-6] within 90 days after the enactment of this Act [June 19, 1986].”

BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY

Pub. L. 99-339, title I, §109(c), June 19, 1986, 100 Stat. 652, as amended by Pub. L. 102-54, §13(q)(2), June 13, 1991, 105 Stat. 279, provided that:

“(1) PROHIBITION.—The Secretary of Housing and Urban Development and the Secretary of Veterans Affairs may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

“(2) DEFINITION OF LEAD FREE.—For purposes of paragraph (1) the term ‘lead free’—

“(A) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

“(B) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

“(3) EFFECTIVE DATE.—Paragraph (1) shall become effective 24 months after the enactment of this Act [June 19, 1986].”

§ 300g-7. Monitoring of contaminants**(a) Interim monitoring relief authority****(1) In general**

A State exercising primary enforcement responsibility for public water systems may modify the monitoring requirements for any regulated or unregulated contaminants for which monitoring is required other than microbial contaminants (or indicators thereof), disinfectants and disinfection byproducts or corrosion byproducts for an interim period to provide that any public water system serving 10,000 persons or fewer shall not be required to conduct additional quarterly monitoring during an interim relief period for such contaminants if—

(A) monitoring, conducted at the beginning of the period for the contaminant concerned and certified to the State by the public water system, fails to detect the presence of the contaminant in the ground or surface water supplying the public water system; and

(B) the State, considering the hydrogeology of the area and other relevant factors, determines in writing that the contaminant is unlikely to be detected by further monitoring during such period.

(2) Termination; timing of monitoring

The interim relief period referred to in paragraph (1) shall terminate when permanent monitoring relief is adopted and approved for such State, or at the end of 36 months after August 6, 1996, whichever comes first. In order to serve as a basis for interim relief, the monitoring conducted at the beginning of the period must occur at the time determined by the State to be the time of the public water system's greatest vulnerability to the contaminant concerned in the relevant ground or surface water, taking into account in the case of pesticides the time of application of the pesticide for the source water area and the travel time for the pesticide to reach such waters and taking into account, in the case of other contaminants, seasonality of precipitation and contaminant travel time.

(b) Permanent monitoring relief authority**(1) In general**

Each State exercising primary enforcement responsibility for public water systems under this subchapter and having an approved source water assessment program may adopt, in accordance with guidance published by the Administrator, tailored alternative monitoring requirements for public water systems in such State (as an alternative to the monitoring requirements for chemical contaminants set forth in the applicable national primary drinking water regulations) where the State concludes that (based on data available at the time of adoption concerning susceptibility, use, occurrence, or wellhead protection, or from the State's drinking water source water assessment program) such alternative monitoring would provide assurance that it complies with the Administrator's guidelines. The State program must be adequate to assure

compliance with, and enforcement of, applicable national primary drinking water regulations. Alternative monitoring shall not apply to regulated microbiological contaminants (or indicators thereof), disinfectants and disinfection byproducts, or corrosion byproducts. The preceding sentence is not intended to limit other authority of the Administrator under other provisions of this subchapter to grant monitoring flexibility.

(2) Guidelines**(A) In general**

The Administrator shall issue, after notice and comment and at the same time as guidelines are issued for source water assessment under section 300j-13 of this title, guidelines for States to follow in proposing alternative monitoring requirements under paragraph (1) for chemical contaminants. The Administrator shall publish such guidelines in the Federal Register. The guidelines shall assure that the public health will be protected from drinking water contamination. The guidelines shall require that a State alternative monitoring program apply on a contaminant-by-contaminant basis and that, to be eligible for such alternative monitoring program, a public water system must show the State that the contaminant is not present in the drinking water supply or, if present, it is reliably and consistently below the maximum contaminant level.

(B) Definition

For purposes of subparagraph (A), the phrase "reliably and consistently below the maximum contaminant level" means that, although contaminants have been detected in a water supply, the State has sufficient knowledge of the contamination source and extent of contamination to predict that the maximum contaminant level will not be exceeded. In determining that a contaminant is reliably and consistently below the maximum contaminant level, States shall consider the quality and completeness of data, the length of time covered and the volatility or stability of monitoring results during that time, and the proximity of such results to the maximum contaminant level. Wide variations in the analytical results, or analytical results close to the maximum contaminant level, shall not be considered to be reliably and consistently below the maximum contaminant level.

(3) Effect of detection of contaminants

The guidelines issued by the Administrator under paragraph (2) shall require that if, after the monitoring program is in effect and operating, a contaminant covered by the alternative monitoring program is detected at levels at or above the maximum contaminant level or is no longer reliably or consistently below the maximum contaminant level, the public water system must either—

(A) demonstrate that the contamination source has been removed or that other action has been taken to eliminate the contamination problem; or

(B) test for the detected contaminant pursuant to the applicable national primary drinking water regulation.

(4) States not exercising primary enforcement responsibility

The Governor of any State not exercising primary enforcement responsibility under section 300g-2 of this title on August 6, 1996, may submit to the Administrator a request that the Administrator modify the monitoring requirements established by the Administrator and applicable to public water systems in that State. After consultation with the Governor, the Administrator shall modify the requirements for public water systems in that State if the request of the Governor is in accordance with each of the requirements of this subsection that apply to alternative monitoring requirements established by States that have primary enforcement responsibility. A decision by the Administrator to approve a request under this clause shall be for a period of 3 years and may subsequently be extended for periods of 5 years.

(c) Treatment as NPDWR

All monitoring relief granted by a State to a public water system for a regulated contaminant under subsection (a) or (b) shall be treated as part of the national primary drinking water regulation for that contaminant.

(d) Other monitoring relief

Nothing in this section shall be construed to affect the authority of the States under applicable national primary drinking water regulations to alter monitoring requirements through waivers or other existing authorities. The Administrator shall periodically review and, as appropriate, revise such authorities.

(July 1, 1944, ch. 373, title XIV, §1418, as added Pub. L. 104-182, title I, §125(b), Aug. 6, 1996, 110 Stat. 1654.)

§ 300g-8. Operator certification

(a) Guidelines

Not later than 30 months after August 6, 1996, and in cooperation with the States, the Administrator shall publish guidelines in the Federal Register, after notice and opportunity for comment from interested persons, including States and public water systems, specifying minimum standards for certification (and recertification) of the operators of community and nontransient noncommunity public water systems. Such guidelines shall take into account existing State programs, the complexity of the system, and other factors aimed at providing an effective program at reasonable cost to States and public water systems, taking into account the size of the system.

(b) State programs

Beginning 2 years after the date on which the Administrator publishes guidelines under subsection (a), the Administrator shall withhold 20 percent of the funds a State is otherwise entitled to receive under section 300j-12 of this title unless the State has adopted and is implementing a program for the certification of oper-

ators of community and nontransient noncommunity public water systems that meets the requirements of the guidelines published pursuant to subsection (a) or that has been submitted in compliance with subsection (c) and that has not been disapproved.

(c) Existing programs

For any State exercising primary enforcement responsibility for public water systems or any other State which has an operator certification program, the guidelines under subsection (a) shall allow the State to enforce such program in lieu of the guidelines under subsection (a) if the State submits the program to the Administrator within 18 months after the publication of the guidelines unless the Administrator determines (within 9 months after the State submits the program to the Administrator) that such program is not substantially equivalent to such guidelines. In making this determination, an existing State program shall be presumed to be substantially equivalent to the guidelines, notwithstanding program differences, based on the size of systems or the quality of source water, providing the State program meets the overall public health objectives of the guidelines. If disapproved, the program may be resubmitted within 6 months after receipt of notice of disapproval.

(d) Expense reimbursement

(1) In general

The Administrator shall provide reimbursement for the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating systems serving 3,300 persons or fewer that are required to undergo training pursuant to this section.

(2) State grants

The reimbursement shall be provided through grants to States with each State receiving an amount sufficient to cover the reasonable costs for training all such operators in the State, as determined by the Administrator, to the extent required by this section. Grants received by a State pursuant to this paragraph shall first be used to provide reimbursement for training and certification costs of persons operating systems serving 3,300 persons or fewer. If a State has reimbursed all such costs, the State may, after notice to the Administrator, use any remaining funds from the grant for any of the other purposes authorized for grants under section 300j-12 of this title.

(3) Authorization

There are authorized to be appropriated to the Administrator to provide grants for reimbursement under this section \$30,000,000 for each of fiscal years 1997 through 2003.

(4) Reservation

If the appropriation made pursuant to paragraph (3) for any fiscal year is not sufficient to satisfy the requirements of paragraph (1), the Administrator shall, prior to any other allocation or reservation, reserve such sums as necessary from the funds appropriated pursuant

to section 300j-12(m) of this title to provide reimbursement for the training and certification costs mandated by this subsection.

(July 1, 1944, ch. 373, title XIV, §1419, as added Pub. L. 104-182, title I, §123, Aug. 6, 1996, 110 Stat. 1652.)

§ 300g-9. Capacity development

(a) State authority for new systems

A State shall receive only 80 percent of the allotment that the State is otherwise entitled to receive under section 300j-12 of this title (relating to State loan funds) unless the State has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

(b) Systems in significant noncompliance

(1) List

Beginning not later than 1 year after August 6, 1996, each State shall prepare, periodically update, and submit to the Administrator a list of community water systems and nontransient, noncommunity water systems that have a history of significant noncompliance with this subchapter (as defined in guidelines issued prior to August 6, 1996, or any revisions of the guidelines that have been made in consultation with the States) and, to the extent practicable, the reasons for noncompliance.

(2) Report

Not later than 5 years after August 6, 1996, and as part of the capacity development strategy of the State, each State shall report to the Administrator on the success of enforcement mechanisms and initial capacity development efforts in assisting the public water systems listed under paragraph (1) to improve technical, managerial, and financial capacity.

(3) Withholding

The list and report under this subsection shall be considered part of the capacity development strategy of the State required under subsection (c) of this section for purposes of the withholding requirements of section 300j-12(a)(1)(G)(i) of this title (relating to State loan funds).

(c) Capacity development strategy

(1) In general

Beginning 4 years after August 6, 1996, a State shall receive only—

- (A) 90 percent in fiscal year 2001;
- (B) 85 percent in fiscal year 2002; and
- (C) 80 percent in each subsequent fiscal year,

of the allotment that the State is otherwise entitled to receive under section 300j-12 of this title (relating to State loan funds), unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.

(2) Content

In preparing the capacity development strategy, the State shall consider, solicit public comment on, and include as appropriate—

(A) the methods or criteria that the State will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;

(B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development;

(C) a description of how the State will use the authorities and resources of this subchapter or other means to—

(i) assist public water systems in complying with national primary drinking water regulations;

(ii) encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and

(iii) assist public water systems in the training and certification of operators;

(D) a description of how the State will establish a baseline and measure improvements in capacity with respect to national primary drinking water regulations and State drinking water law;

(E) an identification of the persons that have an interest in and are involved in the development and implementation of the capacity development strategy (including all appropriate agencies of Federal, State, and local governments, private and nonprofit public water systems, and public water system customers); and

(F) a description of how the State will, as appropriate—

(i) encourage development by public water systems of asset management plans that include best practices for asset management; and

(ii) assist, including through the provision of technical assistance, public water systems in training operators or other relevant and appropriate persons in implementing such asset management plans.

(3) Report

Not later than 2 years after the date on which a State first adopts a capacity development strategy under this subsection, and every 3 years thereafter, the head of the State agency that has primary responsibility to carry out this subchapter in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State, including efforts of the State to encourage development by public water systems of asset management plans and to assist public water systems in training relevant and appropriate persons in implementing such asset management plans.

(4) Review

The decisions of the State under this section regarding any particular public water system

are not subject to review by the Administrator and may not serve as the basis for withholding funds under section 300j-12 of this title.

(d) Federal assistance

(1) In general

The Administrator shall support the States in developing capacity development strategies.

(2) Informational assistance

(A) In general

Not later than 180 days after August 6, 1996, the Administrator shall—

(i) conduct a review of State capacity development efforts in existence on August 6, 1996, and publish information to assist States and public water systems in capacity development efforts; and

(ii) initiate a partnership with States, public water systems, and the public to develop information for States on recommended operator certification requirements.

(B) Publication of information

The Administrator shall publish the information developed through the partnership under subparagraph (A)(ii) not later than 18 months after August 6, 1996.

(3) Promulgation of drinking water regulations

In promulgating a national primary drinking water regulation, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems.

(4) Guidance for new systems

Not later than 2 years after August 6, 1996, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

(5) Information on asset management practices

Not later than 5 years after October 23, 2018, and not less often than every 5 years thereafter, the Administrator shall review and, if appropriate, update educational materials, including handbooks, training materials, and technical information, made available by the Administrator to owners, managers, and operators of public water systems, local officials, technical assistance providers (including non-profit water associations), and State personnel concerning best practices for asset management strategies that may be used by public water systems.

(e) Variances and exemptions

Based on information obtained under subsection (c)(3), the Administrator shall, as appropriate, modify regulations concerning variances and exemptions for small public water systems to ensure flexibility in the use of the variances and exemptions. Nothing in this subsection shall be interpreted, construed, or applied to affect or

alter the requirements of section 300g-4 or 300g-5 of this title.

(f) Small public water systems technology assistance centers

(1) Grant program

The Administrator is authorized to make grants to institutions of higher learning to establish and operate small public water system technology assistance centers in the United States.

(2) Responsibilities of the centers

The responsibilities of the small public water system technology assistance centers established under this subsection shall include the conduct of training and technical assistance relating to the information, performance, and technical needs of small public water systems or public water systems that serve Indian Tribes.

(3) Applications

Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria

The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The small public water system technology assistance center shall be located in a State that is representative of the needs of the region in which the State is located for addressing the drinking water needs of small and rural communities or Indian Tribes.

(B) The grant recipient shall be located in a region that has experienced problems, or may reasonably be foreseen to experience problems, with small and rural public water systems.

(C) The grant recipient shall have access to expertise in small public water system technology management.

(D) The grant recipient shall have the capability to disseminate the results of small public water system technology and training programs.

(E) The projects that the grant recipient proposes to carry out under the grant are necessary and appropriate.

(F) The grant recipient has regional support beyond the host institution.

(5) Consortia of States

At least 2 of the grants under this subsection shall be made to consortia of States with low population densities.

(6) Authorization of appropriations

There are authorized to be appropriated to make grants under this subsection \$2,000,000 for each of the fiscal years 1997 through 1999, and \$5,000,000 for each of the fiscal years 2000 through 2003.

(g) Environmental finance centers

(1) In general

The Administrator shall provide initial funding for one or more university-based envi-

ronmental finance centers for activities that provide technical assistance to State and local officials in developing the capacity of public water systems. Any such funds shall be used only for activities that are directly related to this subchapter.

(2) National capacity development clearinghouse

The Administrator shall establish a national public water system capacity development clearinghouse to receive and disseminate information with respect to developing, improving, and maintaining financial and managerial capacity at public water systems. The Administrator shall ensure that the clearinghouse does not duplicate other federally supported clearinghouse activities.

(3) Capacity development techniques

The Administrator may request an environmental finance center funded under paragraph (1) to develop and test managerial, financial, and institutional techniques for capacity development. The techniques may include capacity assessment methodologies, manual and computer based public water system rate models and capital planning models, public water system consolidation procedures, and regionalization models.

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection \$1,500,000 for each of the fiscal years 1997 through 2003.

(5) Limitation

No portion of any funds made available under this subsection may be used for lobbying expenses.

(July 1, 1944, ch. 373, title XIV, §1420, as added Pub. L. 104-182, title I, §119, Aug. 6, 1996, 110 Stat. 1647; amended Pub. L. 115-270, title II, §2012, Oct. 23, 2018, 132 Stat. 3849.)

Editorial Notes

AMENDMENTS

2018—Subsec. (c)(2)(F). Pub. L. 115-270, §2012(1), added subpar. (F).

Subsec. (c)(3). Pub. L. 115-270, §2012(2), inserted “, including efforts of the State to encourage development by public water systems of asset management plans and to assist public water systems in training relevant and appropriate persons in implementing such asset management plans” before period at end.

Subsec. (d)(5). Pub. L. 115-270, §2012(3), added par. (5).

§ 300g-10. Cybersecurity support for public water systems

(a) Definitions

In this section:

(1) Appropriate Congressional committees

The term “appropriate Congressional committees” means—

- (A) the Committee on Environment and Public Works of the Senate;
- (B) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (C) the Committee on Energy and Commerce of the House of Representatives; and
- (D) the Committee on Homeland Security of the House of Representatives.

(2) Director

The term “Director” means the Director of the Cybersecurity and Infrastructure Security Agency.

(3) Incident

The term “incident” has the meaning given the term in section 3552 of title 44.

(4) Prioritization Framework

The term “Prioritization Framework” means the prioritization framework developed by the Administrator under subsection (b)(1)(A).

(5) Support Plan

The term “Support Plan” means the Technical Cybersecurity Support Plan developed by the Administrator under subsection (b)(2)(A).

(b) Identification of and support for public water systems

(1) Prioritization Framework

(A) In general

Not later than 180 days after November 15, 2021, the Administrator, in coordination with the Director, shall develop a prioritization framework to identify public water systems (including sources of water for those public water systems) that, if degraded or rendered inoperable due to an incident, would lead to significant impacts on the health and safety of the public.

(B) Considerations

In developing the Prioritization Framework, to the extent practicable, the Administrator shall incorporate consideration of—

- (i) whether cybersecurity vulnerabilities for a public water system have been identified under section 300i-2 of this title;
- (ii) the capacity of a public water system to remediate a cybersecurity vulnerability without additional Federal support;
- (iii) whether a public water system serves a defense installation or critical national security asset; and
- (iv) whether a public water system, if degraded or rendered inoperable due to an incident, would cause a cascading failure of other critical infrastructure.

(2) Technical Cybersecurity Support Plan

(A) In general

Not later than 270 days after November 15, 2021, the Administrator, in coordination with the Director and using existing authorities of the Administrator and the Director for providing voluntary support to public water systems and the Prioritization Framework, shall develop a Technical Cybersecurity Support Plan for public water systems.

(B) Requirements

The Support Plan—

- (i) shall establish a methodology for identifying specific public water systems for which cybersecurity support should be prioritized;
- (ii) shall establish timelines for making voluntary technical support for

cybersecurity available to specific public water systems;

(iii) may include public water systems identified by the Administrator, in coordination with the Director, as needing technical support for cybersecurity;

(iv) shall include specific capabilities of the Administrator and the Director that may be utilized to provide support to public water systems under the Support Plan, including—

(I) site vulnerability and risk assessments;

(II) penetration tests; and

(III) any additional support determined to be appropriate by the Administrator; and

(v) shall only include plans for providing voluntary support to public water systems.

(3) Consultation required

In developing the Prioritization Framework pursuant to paragraph (1) and the Support Plan pursuant to paragraph (2), the Administrator shall consult with such Federal or non-Federal entities as determined to be appropriate by the Administrator.

(4) Reports required

(A) Prioritization Framework

Not later than 190 days after November 15, 2021, the Administrator shall submit to the appropriate Congressional committees a report describing the Prioritization Framework.

(B) Technical Cybersecurity Support Plan

Not later than 280 days after November 15, 2021, the Administrator shall submit to the appropriate Congressional committees—

(i) the Support Plan; and

(ii) a list describing any public water systems identified by the Administrator, in coordination with the Director, as needing technical support for cybersecurity during the development of the Support Plan.

(c) Rules of construction

Nothing in this section—

(1) alters the existing authorities of the Administrator; or

(2) compels a public water system to accept technical support offered by the Administrator.

(July 1, 1944, ch. 373, title XIV, §1420A, as added Pub. L. 117-58, div. E, title I, §50113, Nov. 15, 2021, 135 Stat. 1155.)

PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

§ 300h. Regulations for State programs

(a) Publication of proposed regulations; promulgation; amendments; public hearings; administrative consultations

(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after December 16, 1974. Within 180 days after publication of such proposed regulations, he shall promulgate such

regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) Minimum requirements; restrictions

(1) Regulations under subsection (a) for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2). Such regulations shall require that a State program, in order to be approved under section 300h-1 of this title—

(A) shall prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 300j-6(b)¹ of this title, to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(3)(A) The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.

¹ See References in Text note below.