

**§ 300j-4. Records and inspections****(a) Provision of information to Administrator; monitoring program for unregulated contaminants**

(1)(A) Every person who is subject to any requirement of this subchapter or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter, in administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.

(B) Every person who is subject to a national primary drinking water regulation under section 300g-1 of this title shall provide such information as the Administrator may reasonably require, after consultation with the State in which such person is located if such State has primary enforcement responsibility for public water systems, on a case-by-case basis, to determine whether such person has acted or is acting in compliance with this subchapter.

(C) Every person who is subject to a national primary drinking water regulation under section 300g-1 of this title shall provide such information as the Administrator may reasonably require to assist the Administrator in establishing regulations under section 300g-1 of this title, after consultation with States and suppliers of water. The Administrator may not require under this subparagraph the installation of treatment equipment or process changes, the testing of treatment technology, or the analysis or processing of monitoring samples, except where the Administrator provides the funding for such activities. Before exercising this authority, the Administrator shall first seek to obtain the information by voluntary submission.

(D) The Administrator shall not later than 2 years after August 6, 1996, after consultation with public health experts, representatives of the general public, and officials of State and local governments, review the monitoring requirements for not fewer than 12 contaminants identified by the Administrator, and promulgate any necessary modifications.

**(2) MONITORING PROGRAM FOR UNREGULATED CONTAMINANTS.—**

(A) **ESTABLISHMENT.**—The Administrator shall promulgate regulations establishing the criteria for a monitoring program for unregulated contaminants. The regulations shall require monitoring of drinking water supplied by public water systems and shall vary the frequency and schedule for monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found, ensuring that only a representative sample of

systems serving 10,000 persons or fewer are required to monitor.

**(B) MONITORING PROGRAM FOR CERTAIN UNREGULATED CONTAMINANTS.—**

(i) **INITIAL LIST.**—Not later than 3 years after August 6, 1996, and every 5 years thereafter, the Administrator shall issue a list pursuant to subparagraph (A) of not more than 30 unregulated contaminants to be monitored by public water systems and to be included in the national drinking water occurrence data base maintained pursuant to subsection (g).

(ii) **GOVERNORS' PETITION.**—The Administrator shall include among the list of contaminants for which monitoring is required under this paragraph each contaminant recommended in a petition signed by the Governor of each of 7 or more States, unless the Administrator determines that the action would prevent the listing of other contaminants of a higher public health concern.

**(C) MONITORING PLAN FOR SMALL AND MEDIUM SYSTEMS.—**

(i) **IN GENERAL.**—Based on the regulations promulgated by the Administrator, each State may develop a representative monitoring plan to assess the occurrence of unregulated contaminants in public water systems that serve a population of 10,000 or fewer in that State. The plan shall require monitoring for systems representative of different sizes, types, and geographic locations in the State.

(ii) **GRANTS FOR SMALL SYSTEM COSTS.**—From funds reserved under section 300j-12(o) of this title or appropriated under subparagraph (H), the Administrator shall pay the reasonable cost of such testing and laboratory analysis as are necessary to carry out monitoring under the plan.

(D) **MONITORING RESULTS.**—Each public water system that conducts monitoring of unregulated contaminants pursuant to this paragraph shall provide the results of the monitoring to the primary enforcement authority for the system.

(E) **NOTIFICATION.**—Notification of the availability of the results of monitoring programs required under paragraph (2)(A) shall be given to the persons served by the system.

(F) **WAIVER OF MONITORING REQUIREMENT.**—The Administrator shall waive the requirement for monitoring for a contaminant under this paragraph in a State, if the State demonstrates that the criteria for listing the contaminant do not apply in that State.

(G) **ANALYTICAL METHODS.**—The State may use screening methods approved by the Administrator under subsection (i) in lieu of monitoring for particular contaminants under this paragraph.

(H) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this paragraph \$10,000,000 for each of the fiscal years 2019 through 2021.

**(b) Entry of establishments, facilities, or other property; inspections; conduct of certain tests; audit and examination of records; entry restrictions; prohibition against informing of a proposed entry**

(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to (A) a national primary drinking water regulation prescribed under section 300g-1 of this title, (B) an applicable underground injection control program, or (C) any requirement to monitor an unregulated contaminant pursuant to subsection (a), or person in charge of any of the property of such supplier or other person referred to in clause (A), (B), or (C), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this subchapter, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) or which are pertinent to any financial assistance under this subchapter.

(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice under this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

**(c) Penalty**

Whoever fails or refuses to comply with any requirement of subsection (a) or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b)

shall be subject to a civil penalty of not to exceed \$25,000.

**(d) Confidential information; trade secrets and secret processes; information disclosure; "information required under this section" defined**

(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this subchapter or to committees of the Congress, or when relevant in any proceeding under this subchapter, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term "information required under this section" means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

**(e) "Grantee" and "person" defined**

For purposes of this section, (1) the term "grantee" means any person who applies for or receives financial assistance, by grant, contract, or loan guarantee under this subchapter, and (2) the term "person" includes a Federal agency.

**(f) Information regarding drinking water coolers**

The Administrator may utilize the authorities of this section for purposes of part F. Any person who manufactures, imports, sells, or distributes drinking water coolers in interstate commerce shall be treated as a supplier of water for purposes of applying the provisions of this section in the case of persons subject to part F.

**(g) Occurrence data base**

**(1) In general**

Not later than 3 years after August 6, 1996, the Administrator shall assemble and maintain a national drinking water contaminant occurrence data base, using information on the occurrence of both regulated and unregulated contaminants in public water systems obtained under subsection (a)(1)(A) or subsection (a)(2) and reliable information from other public and private sources.

**(2) Public input**

In establishing the occurrence data base, the Administrator shall solicit recommendations from the Science Advisory Board, the States, and other interested parties concerning the development and maintenance of a national drinking water contaminant occurrence data base, including such issues as the structure

and design of the data base, data input parameters and requirements, and the use and interpretation of data.

**(3) Use**

The data shall be used by the Administrator in making determinations under section 300g-1(b)(1) of this title with respect to the occurrence of a contaminant in drinking water at a level of public health concern.

**(4) Public recommendations**

The Administrator shall periodically solicit recommendations from the appropriate officials of the National Academy of Sciences and the States, and any person may submit recommendations to the Administrator, with respect to contaminants that should be included in the national drinking water contaminant occurrence data base, including recommendations with respect to additional unregulated contaminants that should be listed under subsection (a)(2). Any recommendation submitted under this clause shall be accompanied by reasonable documentation that—

- (A) the contaminant occurs or is likely to occur in drinking water; and
- (B) the contaminant poses a risk to public health.

**(5) Public availability**

The information from the data base shall be available to the public in readily accessible form.

**(6) Regulated contaminants**

With respect to each contaminant for which a national primary drinking water regulation has been established, the data base shall include information on the detection of the contaminant at a quantifiable level in public water systems (including detection of the contaminant at levels not constituting a violation of the maximum contaminant level for the contaminant).

**(7) Unregulated contaminants**

With respect to contaminants for which a national primary drinking water regulation has not been established, the data base shall include—

- (A) monitoring information collected by public water systems that serve a population of more than 10,000, as required by the Administrator under subsection (a);
- (B) monitoring information collected from a representative sampling of public water systems that serve a population of 10,000 or fewer;
- (C) if applicable, monitoring information collected by public water systems pursuant to subsection (j) that is not duplicative of monitoring information included in the data base under subparagraph (B) or (D); and
- (D) other reliable and appropriate monitoring information on the occurrence of the contaminants in public water systems that is available to the Administrator.

**(h) Availability of information on small system technologies**

For purposes of sections 300g-1(b)(4)(E) and 300g-4(e) of this title (relating to small system

variance program), the Administrator may request information on the characteristics of commercially available treatment systems and technologies, including the effectiveness and performance of the systems and technologies under various operating conditions. The Administrator may specify the form, content, and submission date of information to be submitted by manufacturers, States, and other interested persons for the purpose of considering the systems and technologies in the development of regulations or guidance under sections 300g-1(b)(4)(E) and 300g-4(e) of this title.

**(i) Screening methods**

The Administrator shall review new analytical methods to screen for regulated contaminants and may approve such methods as are more accurate or cost-effective than established reference methods for use in compliance monitoring.

**(j) Monitoring by certain systems**

**(1) In general**

Notwithstanding subsection (a)(2)(A), the Administrator shall, subject to the availability of appropriations for such purpose—

- (A) require public water systems serving between 3,300 and 10,000 persons to monitor for unregulated contaminants in accordance with this section; and
- (B) ensure that only a representative sample of public water systems serving fewer than 3,300 persons are required to monitor.

**(2) Effective date**

Paragraph (1) shall take effect 3 years after October 23, 2018.

**(3) Limitation**

Paragraph (1) shall take effect unless the Administrator determines that there is not sufficient laboratory capacity to accommodate the analysis necessary to carry out monitoring required under such paragraph.

**(4) Limitation on enforcement**

The Administrator may not enforce a requirement to monitor pursuant to paragraph (1) with respect to any public water system serving fewer than 3,300 persons, including by subjecting such a public water system to any civil penalty.

**(5) Authorization of appropriations**

There are authorized to be appropriated \$15,000,000 in each fiscal year for which monitoring is required to be carried out under this subsection for the Administrator to pay the reasonable cost of such testing and laboratory analysis as are necessary to carry out monitoring required under this subsection.

(July 1, 1944, ch. 373, title XIV, §1445, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1686; amended Pub. L. 95-190, §12(c), (d), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 99-339, title I, §106, title III, §301(h), June 19, 1986, 100 Stat. 650, 665; Pub. L. 100-572, §5, Oct. 31, 1988, 102 Stat. 2889; Pub. L. 104-182, title I, §§111(b), 125(a), (c), (d), 126, Aug. 6, 1996, 110 Stat. 1633, 1653, 1656-1658; Pub. L. 115-270, title II, §2021, Oct. 23, 2018, 132 Stat. 3861.)

**Editorial Notes****AMENDMENTS**

2018—Subsec. (a)(2)(H). Pub. L. 115-270, § 2021(b), substituted “2019 through 2021” for “1997 through 2003”.

Subsec. (g)(7)(C), (D). Pub. L. 115-270, § 2021(c), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (j). Pub. L. 115-270, § 2021(a), added subsec. (j).

1996—Subsec. (a)(1). Pub. L. 104-182, § 125(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 300g-1 of this title or to an applicable underground injection control program (as defined in section 300h-1(c) of this title), who is or may be subject to the permit requirement of section 300h-3 of this title, or to an order issued under section 300j of this title, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter in administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system’s drinking water.”

Subsec. (a)(2) to (8). Pub. L. 104-182, § 125(c), added heading and text of par. (2) and struck out former pars. (2) to (8) which directed Administrator, not later than 18 months after June 19, 1986, to promulgate regulations requiring every public water system to conduct a monitoring program for unregulated contaminants, specified contents of regulations, provided for reporting and notification of availability of results of monitoring, waiver of monitoring requirements, and compliance by small systems, and authorized appropriations for fiscal year ending Sept. 30, 1987.

Subsec. (g). Pub. L. 104-182, § 126, added subsec. (g).

Subsec. (h). Pub. L. 104-182, § 111(b), added subsec. (h).

Subsec. (i). Pub. L. 104-182, § 125(d), added subsec. (i).

1988—Subsec. (f). Pub. L. 100-572 added subsec. (f).

1986—Subsec. (a)(1). Pub. L. 99-339, § 106(a), (b), designated existing provisions as par. (1) and inserted provisions permitting Administrator to consider size of system and contaminants likely to be found.

Subsec. (a)(2) to (7). Pub. L. 99-339, § 106(b), added pars. (2) to (7).

Subsec. (a)(8). Pub. L. 99-339, § 301(h), added par. (8).

Subsec. (c). Pub. L. 99-339, § 106(c), substituted “shall be subject to a civil penalty of not to exceed \$25,000” for “may be fined not more than \$5,000”.

1977—Subsec. (a). Pub. L. 95-190, § 12(c), inserted provisions relating to evaluating and advising of health risks of unregulated contaminants.

Subsec. (b)(1). Pub. L. 95-190, § 12(d), designated existing provisions as cls. (A) and (B) and added cl. (C) and reference to such cls. (A) to (C).

### **§ 300j-5. National Drinking Water Advisory Council**

#### **(a) Establishment; membership; representation of interests; term of office, vacancies; reappointment**

There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water hygiene and public water supply; and

five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two such members shall be associated with small, rural public water systems. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after December 16, 1974, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

#### **(b) Functions**

The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this subchapter.

#### **(c) Compensation and allowances; travel expenses**

Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b)<sup>1</sup> of title 5.

#### **(d) Advisory committee termination provision inapplicable**

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

(July 1, 1944, ch. 373, title XIV, § 1446, as added Pub. L. 93-523, § 2(a), Dec. 16, 1974, 88 Stat. 1688; amended Pub. L. 104-182, title I, § 127, Aug. 6, 1996, 110 Stat. 1659.)

**Editorial Notes****REFERENCES IN TEXT**

Section 5703 of title 5, referred to in subsec. (c), was amended generally by Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

<sup>1</sup> See References in Text note below.