

Environmental Protection Agency

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§ 142.16 Special primacy requirements.

(a) *State public notification requirements.* (1) Each State that has primary enforcement authority under this part must submit complete and final requests for approval of program revisions to adopt the requirements of subpart Q of part 141 of this chapter, using the procedures in §142.12(b) through (d). At its option, a State may, by rule, and after notice and comment, establish alternative public notification requirements with respect to the form and content of the public notice required under subpart Q of part 141 of this chapter. The alternative requirements must provide the same type and amount of information required under subpart Q and must meet the primacy requirements under §142.10.

(2) As part of the revised primacy program, a State must also establish enforceable requirements and procedures when the State adds to or changes the requirements under:

(i) *Table 1 to 40 CFR 141.201(a)(Item (3)(v))*—To require public water systems to give a public notice for violations or situations other than those listed in appendix A of subpart Q of part 141 of this chapter;

(ii) *40 CFR 141.201(c)(2)*—To allow public water systems, under the specific circumstances listed in §141.201(c)(2), to limit the distribution of the public notice to persons served by the portion of the distribution system that is out of compliance;

(iii) *Table 1 of 40 CFR 141.202(a) (Items (5), (6), and (9))*—To require public water systems to give a Tier 1 public notice (rather than a Tier 2 or Tier 3 notice) for violations or situations listed in appendix A of subpart Q of part 141 of this chapter;

(iv) *40 CFR 141.202(b)(3)*—To require public water systems to comply with additional Tier 1 public notification requirements set by the State subsequent to the initial 24-hour Tier 1 notice, as a result of their consultation with the State required under §§141.202(b)(2);

(v) *40 CFR 141.202(c), 141.203(c) and 141.204(c)*—To require a different form and manner of delivery for Tier 1, 2 and 3 public notices.

(vi) *Table 1 to 40 CFR 141.203(a) (Item (2))*—To require the public water systems to provide a Tier 2 public notice (rather than Tier (3)) for monitoring or testing procedure violations specified by the State;

(vii) *40 CFR 141.203(b)(1)*—To grant public water systems an extension up to three months for distributing the Tier 2 public notice in appropriate circumstances (other than those specifically excluded in the rule);

(viii) *40 CFR 141.203(b)(2)*—To grant a different repeat notice frequency for the Tier 2 public notice in appropriate circumstances (other than those specifically excluded in the rule), but no less frequently than once per year;

(ix) *40 CFR 141.203(b)(3)*—To respond within 24 hours to a request for consultation by the public water system to determine whether a Tier 1 (rather than a Tier 2) notice is required for a turbidity MCL violation under §141.13(b) or a SWTR/IESWTR TT violation due to a single exceedance of the maximum allowable turbidity limit;

(x) *40 CFR 141.205(c)*—To determine the specific multilingual requirement for a public water system, including defining “large proportion of non-English-speaking consumers.”

(b) *Requirements for States to adopt 40 CFR part 141, subpart H Filtration and Disinfection.* In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart H Filtration and Disinfection, must contain the information specified in this paragraph (b), except that States which require without exception all public water systems using a surface water source or a ground water source under the direct influence of surface water to provide filtration need not demonstrate that the State program has provisions that apply to systems which do not provide filtration treatment. However, such States must provide the text of the State statutes or regulations which specifies that all public water systems using a surface water source or a ground water source under the direct

influence of surface water must provide filtration.

(1) *Enforceable requirements.* (i) In addition to adopting criteria no less stringent than those specified in part 141, subpart H of this chapter, the State's application must include enforceable design and operating criteria for each filtration treatment technology allowed or a procedure for establishing design and operating conditions on a system-by-system basis (e.g., a permit system).

(ii) States must have the appropriate rules or other authority to assure that PWSs respond in writing to significant deficiencies outlined in sanitary survey reports required under paragraph (b)(3) of this section no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(iii) States must have the appropriate rules or other authority to assure that PWSs take necessary steps to address significant deficiencies identified in sanitary survey reports required under paragraph (b)(3) of this section, if such deficiencies are within the control of the PWS and its governing body.

(2) *State practices or procedures.* (i) A State application for program revision approval must include a description of how the State will accomplish the following:

(A) Section 141.70(c) (qualification of operators)—Qualify operators of systems using a surface water source or a ground water source under the direct influence of surface water.

(B) Determine which systems using a ground water source are under the direct influence of surface water by June 29, 1994 for community water systems and by June 29, 1999 for non-community water systems.

(C) Section 141.72(b)(1) (achieving required *Giardia lamblia* and virus removal in filtered systems)—Determine that the combined treatment process incorporating disinfection treatment and filtration treatment will achieve the required removal and/or inactivation of *Giardia lamblia* and viruses.

(D) Section 141.74(a) (State approval of parties to conduct analyses)—approve parties to conduct pH, tempera-

ture, turbidity, and residual disinfectant concentration measurements.

(E) Determine appropriate filtration treatment technology for source waters of various qualities.

(ii) For a State which does not require all public water systems using a surface water source or ground water source under the direct influence of surface water to provide filtration treatment, a State application for program revision approval must include a description of how the State will accomplish the following:

(A) Section 141.71(b)(2) (watershed control program)—Judge the adequacy of watershed control programs.

(B) Section 141.71(b)(3) (approval of on-site inspectors)—Approve on-site inspectors other than State personnel and evaluate the results of on-site inspections.

(iii) For a State which adopts any of the following discretionary elements of part 141 of this chapter, the application must describe how the State will:

(A) Section 141.72 (interim disinfection requirements)—Determine interim disinfection requirements for unfiltered systems which the State has determined must filter which will be in effect until filtration is installed.

(B) Section 141.72 (a)(4)(ii) and (b)(3)(ii) (determination of adequate disinfection in system without disinfectant residual)—Determine that a system is unable to measure HPC but is still providing adequate disinfection in the distribution system, as allowed by §141.72(a)(4)(ii) for systems which do not provide filtration treatment and §141.72(b)(3)(ii) for systems which do provide filtration treatment.

(C) Section 141.73 (a)(1) and (b)(1) (alternative turbidity limit)—Determine whether an alternative turbidity limit is appropriate and what the level should be as allowed by §141.73(a)(1) for a system using conventional filtration treatment or direct filtration and by §141.73(b)(1) for a system using slow sand filtration.

(D) Section 141.73(d) (alternative filtration technologies)—Determine that a public water system has demonstrated that an alternate filtration technology, in combination with disinfection treatment, achieves adequate

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removal and/or disinfection of *Giardia lamblia* and viruses.

(E) Section 141.74(a)(5) (alternate analytical method for chlorine)—Approve DPD colorimetric test kits for free and combined chlorine measurement or approve calibration of automated methods by the Indigo Method for ozone determination.

(F) Section 141.74 (b)(2) and (c)(1) (approval of continuous turbidity monitoring)—Approve continuous turbidity monitoring, as allowed by §141.74(b)(2) for a public water system which does not provide filtration treatment and §141.74(c)(1) for a system which does provide filtration treatment.

(G) Section 141.74 (b)(6)(i) and (c)(3)(i) (approval of alternate disinfectant residual concentration sampling plans)—Approve alternate disinfectant residual concentration sampling plans for systems which have a combined ground water and surface water or ground water and ground water under the direct influence of a surface water distribution system, as allowed by §141.74(b)(6)(i) for a public water system which does not provide filtration treatment and §141.74(c)(3)(i) for a public water system which does provide filtration treatment.

(H) Section 141.74(c)(1) (reduction of turbidity monitoring)—Decide whether to allow reduction of turbidity monitoring for systems using slow sand filtration, an approved alternate filtration technology or serving 500 people or fewer.

(I) Section 141.75 (a)(2)(ix) and (b)(2)(iv) (reduced reporting)—Determine whether reduced reporting is appropriate, as allowed by §141.75(a)(2)(ix) for a public water system which does not provide filtration treatment and §141.75(b)(2)(iv) for a public water system which does provide filtration treatment.

(iv) For a State which does not require all public water systems using a surface water source or ground water source under the direct influence of surface water to provide filtration treatment and which uses any of the following discretionary provisions, the application must describe how the State will:

(A) Section 141.71(a)(2)(i) (source water turbidity requirements)—Deter-

mine that an exceedance of turbidity limits in source water was caused by circumstances that were unusual and unpredictable.

(B) Section 141.71(b)(1)(i) (monthly CT compliance requirements)—Determine whether failure to meet the requirements for monthly CT compliance in §141.72(a)(1) was caused by circumstances that were unusual and unpredictable.

(C) Section 141.71(b)(1)(iii) (residual disinfectant concentration requirements)—Determine whether failure to meet the requirements for residual disinfectant concentration entering the distribution system in §141.72(a)(3)(i) was caused by circumstances that were unusual and unpredictable.

(D) Section 141.71(b)(1)(iv) (distribution system disinfectant residual concentration requirements)—Determine whether failure to meet the requirements for distribution system residual disinfectant concentration in §141.72(a)(4) was related to a deficiency in treatment.

(E) Section 141.71(b)(4) (system modification to prevent waterborne disease outbreak)—Determine that a system, after having been identified as the source of a waterborne disease outbreak, has been modified sufficiently to prevent another such occurrence.

(F) Section 141.71(b)(5) (total coliform MCL)—Determine whether a total coliform MCL violation was caused by a deficiency in treatment.

(G) Section 141.72(a)(1) (disinfection requirements)—Determine that different ozone, chloramine, or chlorine dioxide CT_{99.9} values or conditions are adequate to achieve required disinfection.

(H) Section 141.72(a)(2)(ii) (shut-off of water to distribution system)—Determine whether a shut-off of water to the distribution system when the disinfectant residual concentration entering the distribution system is less than 0.2 mg/l will cause an unreasonable risk to health or interfere with fire protection.

(I) Section 141.74(b)(1) (coliform monitoring)—Determine that coliform monitoring which otherwise might be required is not feasible for a system.

(J) Section 141.74(b), table 3.1 (disinfection with chloramines)—Determine the conditions to be met to insure

99.99 percent removal and/or inactivation of viruses in systems which use either preformed chloramines or chloramines for which ammonia is added to the water before chlorine, as allowed by table 3.1.

(3) *Sanitary survey.* In addition to the general requirements for sanitary surveys contained in §142.10(b)(2), an application must describe how the State will implement a sanitary survey program that meets the requirements in paragraphs (b)(3)(i) through (v) of this section. For the purposes of this paragraph, “sanitary survey” means an on-site review of the water source (identifying sources of contamination using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(i) The State must conduct sanitary surveys for all surface water systems (including groundwater under the influence) that address the eight sanitary survey components listed in paragraphs (b)(3)(i)(A) through (H) of this section no less frequently than every three years for community systems and no less frequently than every five years for noncommunity systems. The State may allow sanitary surveys conducted after December 1995 to serve as the first set of required sanitary surveys if the surveys address the eight sanitary survey components listed in paragraphs (b)(3)(i)(A) through (H) of this section.

(A) Source.

(B) Treatment, including corrosion control treatment and water quality parameters as applicable.

(C) Distribution system.

(D) Finished water storage.

(E) Pumps, pump facilities, and controls.

(F) Monitoring and reporting and data verification.

(G) System management and operation.

(H) Operator compliance with State requirements.

(ii) For community systems determined by the State to have outstanding performance based on prior sanitary surveys, subsequent sanitary

surveys may be conducted no less than every five years. In its primacy application, the State must describe how it will decide whether a system has outstanding performance and is thus eligible for sanitary surveys at a reduced frequency.

(iii) Components of a sanitary survey may be completed as part of a staged or phased state review process within the established frequency.

(iv) When conducting sanitary surveys for systems required to comply with the disinfection profiling requirements in §141.172 of this chapter, the State must also review the disinfection profile as part of the sanitary survey.

(v) In its primacy application, the State must describe how it will decide whether a deficiency identified during a sanitary survey is significant for the purposes of paragraph (b)(1)(ii) of this section.

(c) *Total coliform requirements.* In addition to meeting the general primacy requirements of this part, an application for approval of a State program revision that adopts the requirements of the national primary drinking water regulation for total coliforms must contain the following information:

(1) The application must describe the State’s plan for determining whether sample siting plans are acceptable (including periodic reviews), as required by §141.21(a)(1).

(2) The national primary drinking water regulation for total coliforms in part 141 gives States the option to impose lesser requirements in certain circumstances, which are listed below. If a State chooses to exercise any of these options, its application for approval of a program revision must include the information listed below (the State need only provide the information listed for those options it has chosen to use).

(i) Section 141.21(a)(2) (Reduced monitoring requirements for community water systems serving 1,000 or fewer persons)—A description of how the State will determine whether it is appropriate to reduce the total coliform monitoring frequency for such systems using the criteria in §141.21(a)(2) and how it will determine the revised frequency.

(ii) Section 141.21(a)(3)(i) (Reduced monitoring requirements for non-community water systems using ground water and serving 1,000 persons or fewer)—A description of how the State will determine whether it is appropriate to reduce the total coliform monitoring frequency for such systems using the criteria in §141.21(a)(3)(i) and how it will determine the revised frequency.

(iii) Section 141.21(a)(3)(ii) (Reduced monitoring for non-community water systems using ground water and serving more than 1,000 persons)—A description of how the State will determine whether it is appropriate to reduce the total coliform monitoring frequency for non-community water systems using only ground water and serving more than 1,000 persons during any month the system serves 1,000 persons or fewer and how it will determine the revised frequency.

(iv) Section 141.21(a)(5) (Waiver of time limit for sampling after a turbidity sampling result exceeds 1 NTU)—A description of how the State will determine whether it is appropriate to waive the 24-hour time limit.

(v) Section 141.21(b)(1) (Waiver of time limit for repeat samples)—A description of how the State will determine whether it is appropriate to waive the 24-hour time limit and how it will determine what the revised time limit will be.

(vi) Section 141.21(b)(3) (Alternative repeat monitoring requirements for systems with a single service connection)—A description of how the State will determine whether it is appropriate to allow a system with a single service connection to use an alternative repeat monitoring scheme, as provided in §141.21(b)(3), and what the alternative requirements will be.

(vii) Section 141.21(b)(5) (Waiver of requirement to take five routine samples the month after a system has a total coliform-positive sample)—A description of how the State will determine whether it is appropriate to waive the requirement for certain systems to collect five routine samples during the next month it serves water to the public, using the criteria in §141.21(b)(5).

(viii) Section 141.21(c) (Invalidation of total coliform-positive samples)—A

description of how the State will determine whether it is appropriate to invalidate a total coliform-positive sample, using the criteria in §141.21(c).

(ix) Section 141.21(d) (Sanitary surveys)—A description of the State's criteria and procedures for approving agents other than State personnel to conduct sanitary surveys.

(x) Section 141.21(e)(2) (Waiver of fecal coliform or *E. coli* testing on a total coliform-positive sample)—A description of how the State will determine whether it is appropriate to waive fecal coliform or *E. coli* testing on a total coliform-positive sample.

(d) *Requirements for States to adopt 40 CFR part 141, subpart I—Control of Lead and Copper.* An application for approval of a State program revision which adopts the requirements specified in 40 CFR part 141, subpart I, must contain (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the federal requirements) a description of how the State will accomplish the following program requirements:

(1) Section 141.82—State designation of optimal corrosion control.

(i) Sections 141.82(d), 141.82(f), and 141.82(h)—Designating optimal corrosion control treatment methods, optimal water quality parameters, and modifications thereto.

(ii) Section 141.82(g)—Designating an alternative approach for aggregating multiple measurements collected during the same day for a water quality parameter at a sampling location, if the State elects to adopt a formula other than the one specified in §141.82(g)(1) of this chapter.

(2) Sections 141.83(b)(2) and 141.83(b)(4)—Designating source water treatment methods, maximum permissible source water levels for lead and copper and modifications thereto.

(3) Section 141.90(e)—Verifying compliance with lead service line replacement schedules and completion of all partial lead service line replacement activities.

(4) Section 141.86(d)(4)(iv)(A)—Designating an alternative period for sample collection for community water systems subject to reduced monitoring.

(5) Section 141.84—Providing or requiring the review of any resource, information, or identification method for the development of the initial inventory or inventory updates. Requiring water systems whose inventories contain only non-lead service lines and the water system subsequently finds a lead service line to prepare an updated inventory on a schedule determined by the State.

(6) Section 141.84—For community water systems serving greater than 10,000 persons, approving the lead service line replacement goal rate as recommended by the water system in its lead service line replacement plan, or designating an alternative goal rate than recommended, within six months of the compliance date specified in § 141.80(a) of this chapter.

(7) Section 141.84(g)(9)—Determining whether a greater mandatory lead service line replacement rate is feasible and notifying the system of the determination in writing within 6 months after the system is required to begin lead service line replacement (LSLR).

(8) Section 141.92—Defining a school or child care facility and determining any existing State or local testing program is at least as stringent as the Federal requirements.

(9) Section 141.82—Verifying compliance with “find-and-fix” requirements.

(10) Section 141.88—Reviewing any change in source water or treatment and making related determinations, including approval; establishment of additional requirements to ensure the system will operate and maintain optimal corrosion control treatment; and an evaluation of how this change may impact other national primary drinking water regulations in part 141 of this chapter.

(e) An application for approval of a State program revision which adopts the requirements specified in §§ 141.11, 141.23, 141.24, 141.32, 141.61, and 141.62 for a newly regulated contaminant must contain the following (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the Federal requirements):

(1) If a State chooses to issue waivers from the monitoring requirements in

§§ 141.23 and 141.24, the State shall describe the procedures and criteria which it will use to review waiver applications and issue waiver determinations.

(i) The procedures for each contaminant or class of contaminants shall include a description of:

(A) The waiver application requirements;

(B) The State review process for “use” waivers and for “susceptibility” waivers; and

(C) The State decision criteria, including the factors that will be considered in deciding to grant or deny waivers. The decision criteria must include the factors specified in §§ 141.24(f)(8) and 141.24(h)(6).

(ii) The State must specify the monitoring data and other documentation required to demonstrate that the contaminant is eligible for a “use” and/or “susceptibility” waiver.

(2) A monitoring plan for the initial monitoring period by which the State will assure all systems complete the required initial monitoring within the regulatory deadlines.

NOTE: States may update their monitoring plan submitted under the Phase II Rule or simply note in their application that they will use the same monitoring plan for the Phase V Rule.

(i) The initial monitoring plan must describe how systems will be scheduled during the initial monitoring period and demonstrate that the analytical workload on certified laboratories for each of the three years has been taken into account, to assure that the State’s plan will result in a high degree of monitoring compliance and that as a result there is a high probability of compliance and will be updated as necessary.

(ii) The State must demonstrate that the initial monitoring plan is enforceable under State law.

(f) *Consumer Confidence Report requirements.* (1) Each State that has primary enforcement responsibility must adopt the requirements of 40 CFR part 141, subpart O no later than August 21, 2000. States must submit revised programs to EPA for approval using the procedures in § 142.12(b) through (d).

(2) Each State that has primary enforcement responsibility must make reports submitted to the States in

compliance with 40 CFR 141.155(c) available to the public upon request.

(3) Each State that has primary enforcement responsibility must maintain a copy of the reports for a period of one year and the certifications obtained pursuant to 40 CFR 141.155(c) for a period of 5 years.

(4) Each State that has primary enforcement responsibility must report violations of this subpart in accordance with the requirements of § 142.15(a)(1).

(g) *Requirements for States to adopt 40 CFR part 141, Subpart P—Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People.* In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, Subpart P Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People, must contain the information specified in this paragraph:

(1) *Enforceable requirements.* States must have the appropriate rules or other authority to require PWSs to conduct a Composite Correction Program (CCP) and to assure that PWSs implement any followup recommendations that result as part of the CCP. The CCP consists of two elements—a Comprehensive Performance Evaluation (CPE) and Comprehensive Technical Assistance (CTA). A CPE is a thorough review and analysis of a plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. A CTA is the performance improvement phase that is implemented if the CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA is a combination of utilizing CPE results as a basis for followup, implementing process control priority-setting techniques and maintaining long-term involvement to

systematically train staff and administrators.

(2) *State practices or procedures.* (i) Section 141.172(a)(3) of this chapter—How the State will approve a more representative annual data set than the data set determined under § 141.172(a)(1) or (2) of this chapter for the purpose of determining applicability of the requirements of § 141.172 of this chapter.

(ii) Section 141.172(b)(5) of this chapter—How the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines or ozone for primary disinfection.

(iii) Section 141.172(c) of this chapter—How the State will consult with PWSs to evaluate modifications to disinfection practice.

(iv) Section 141.173(b) of this chapter—For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, how the State will determine that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.172(b) of this chapter, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. For a system that makes this demonstration, how the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

(h) *Requirements for States to adopt 40 CFR part 141, subpart L.* In addition to the general primacy requirements elsewhere in this part, including the requirement that State regulations be at least as stringent as federal requirements, an application for approval of a State program revision that adopts 40

CFR part 141, subpart L, must contain a description of how the State will accomplish the following program requirements:

(1) Section 141.64(b)(2) of this chapter (interim treatment requirements). Determine any interim treatment requirements for those systems electing to install GAC or membrane filtration and granted additional time to comply with §141.64 of this chapter.

(2) Section 141.130(c) of this chapter (qualification of operators). Qualify operators of public water systems subject to 40 CFR part 141, subpart L. Qualification requirements established for operators of systems subject to 40 CFR part 141, subpart H—Filtration and Disinfection may be used in whole or in part to establish operator qualification requirements for meeting 40 CFR part 141, subpart L requirements if the State determines that the 40 CFR part 141, subpart H requirements are appropriate and applicable for meeting subpart L requirements.

(3) Section 141.131(c)(2) of this chapter (DPD colorimetric test kits). Approve DPD colorimetric test kits for free and total chlorine measurements. State approval granted under §141.74(a)(2) of this chapter for the use of DPD colorimetric test kits for free chlorine testing is acceptable for the use of DPD test kits in measuring free chlorine residuals as required in 40 CFR part 141, subpart L.

(4) Sections 141.131(c)(3) and (d) of this chapter (State approval of parties to conduct analyses). Approve parties to conduct pH, bromide, alkalinity, and residual disinfectant concentration measurements. The State's process for approving parties performing water quality measurements for systems subject to 40 CFR part 141, subpart H requirements in paragraph (b)(2)(i)(D) of this section may be used for approving parties measuring water quality parameters for systems subject to subpart L requirements, if the State determines the process is appropriate and applicable.

(5) Section 141.132(a)(2) of this chapter (multiple wells as a single source). Define the criteria to use to determine if multiple wells are being drawn from a single aquifer and therefore be con-

sidered a single source for compliance with monitoring requirements.

(6) Approve alternate minimum TOC removal (Step 2) requirements, as allowed under the provisions of §141.135(b) of this chapter.

(i) *Requirements for States to adopt 40 CFR part 141, §141.76 Recycle provisions.* In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that the State provisions are no less stringent than the federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, §141.76 Recycle Provisions must contain the information specified in this paragraph:

(1) *State practices or procedures.* (i) Section 141.76(d) of this chapter—States must have the proper rules and authority to use Sanitary Surveys, comprehensive performance evaluations (CPEs), other inspections, or other activities to evaluate recycle data maintained by systems under §141.76(d) of this chapter and require modifications to recycle practices.

(ii) [Reserved]

(2) [Reserved]

(j) An application for approval of a State program revision which adopts the requirements specified in §§141.11, 141.23, 141.24, 141.32, 141.61 and 141.62 for an existing regulated contaminant must contain the following (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the federal requirements):

(1) If a State chooses to issue waivers from the monitoring requirements in §§141.23 and 141.24, the State shall describe the procedures and criteria, that it will use to review waiver applications and issue waiver determinations. The State shall provide the same information required in paragraph (e)(1)(i) and (ii) of this section. States may update their existing waiver criteria or use the requirements submitted under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (*i.e.*, Phase II/V rule) in 16(e) of this section. States may simply note in their application

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any revisions to existing waiver criteria or note that the same procedures to issue waivers will be used.

(2) A monitoring plan by which the State will ensure all systems complete the required monitoring by the regulatory deadlines. States may update their existing monitoring plan or use the same monitoring plan submitted under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (*i.e.*, Phase II/V rule) in 16(e) of this section. States may simply note in their application any revisions to an existing monitoring plan or note that the same monitoring plan will be used. The State must demonstrate that the monitoring plan is enforceable under State law.

(k) States establish the initial monitoring requirements for new systems and new sources. States must explain their initial monitoring schedules and how these monitoring schedules ensure that public water systems and sources comply with MCL's and monitoring requirements. States must also specify the time frame in which new systems will demonstrate compliance with the MCLs.

(1) An application for approval of a State program revision for radionuclides which adopts the requirements specified in §141.26(a)(2)(ii)(C) of this chapter must contain the following (in addition to the general primacy requirements enumerated in this part, including that State regulations be at least as stringent as the Federal requirements):

(1) If a State chooses to use grandfathered data in the manner described in §141.26(a)(2)(ii)(C) of this chapter, then the State must describe the procedures and criteria which it will use to make these determinations (whether distribution system or entry point sampling points are used).

(i) The decision criteria that the State will use to determine that data collected in the distribution system are representative of the drinking water supplied from each entry point to the distribution system. These determinations must consider:

(A) All previous monitoring data.

(B) The variation in reported activity levels.

(C) Other factors affecting the representativeness of the data (e.g. geology).

(ii) [Reserved]

(2) A monitoring plan by which the State will assure all systems complete the required monitoring within the regulatory deadlines. States may update their existing monitoring plan or use the same monitoring plan submitted for the requirements in §142.16(e)(2) under the national primary drinking water regulations for the inorganic and organic contaminants (*i.e.* the phase II/V rules). States may note in their application any revision to an existing monitoring plan or note that the same monitoring plan will be used. The State must demonstrate that the monitoring plan is enforceable under State law.

(m) *Requirements for States to adopt 40 CFR part 141, subparts U and V.* In addition to the general primacy requirements elsewhere in this part, including the requirements that State regulations be at least as stringent as federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subparts U and V, must contain a description of how the State will implement a procedure for addressing modification of wholesale system and consecutive system monitoring on a case-by-case basis for part 141 subpart V outside the provisions of §141.29 of this chapter, if the State elects to use such an authority. The procedure must ensure that all systems have at least one compliance monitoring location.

(n) *Requirements for States to adopt 40 CFR part 141, subpart W.* In addition to the general primacy requirements elsewhere in this part, including the requirements that State regulations be at least as stringent as Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart W, must contain a description of how the State will accomplish the following program requirements where allowed in State programs.

(1) Approve an alternative to the *E. coli* levels that trigger *Cryptosporidium* monitoring by filtered systems serving fewer than 10,000 people, as described in §141.701(a)(5).

(2) Assess significant changes in the watershed and source water as part of the sanitary survey process and determine appropriate follow-up action for systems, as described in §141.711(d) of this chapter.

(3) Approve watershed control programs for the 0.5-log treatment credit in the microbial toolbox, as described in §141.716(a) of this chapter.

(4) Approve protocols for demonstration of performance treatment credits in the microbial toolbox, as allowed under §141.718(c) of this chapter.

(5) Approve protocols for alternative ozone and chlorine dioxide CT values in the microbial toolbox, as allowed under §141.720(c) of this chapter.

(6) Approve an alternative approach to UV reactor validation testing in the microbial toolbox, as allowed under §141.720(d)(2)(iii) of this chapter.

(o) *Requirements for States to adopt 40 CFR part 141, subpart S.* In addition to the general primacy requirements specified elsewhere in this part, including the requirement that State regulations are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart S, must contain the information specified in this paragraph (o).

(1) *Legal authority.* The application for primacy must demonstrate the State has:

(i) The authority contained in statute or regulation to ensure that ground water systems conduct source water monitoring under §§141.402(a)(2), 141.402(a)(3) and 141.402(a)(4)(ii)(A) of this chapter.

(ii) The authority contained in statute or regulation to ensure that ground water systems take the appropriate corrective actions including interim measures, if necessary, needed to address significant deficiencies.

(iii) The authority contained in statute or regulation to ensure that ground water systems take the appropriate corrective actions, including interim measures if necessary, to address any source water fecal contamination identified during source water monitoring under §141.402 of this chapter.

(iv) The authority contained in statute or regulation to ensure that ground

water systems consult with the State regarding corrective action(s).

(2) *State practices or procedures for sanitary surveys.* In addition to the general requirements for sanitary surveys contained in §142.10(b)(2), a primacy application must describe how the State will implement a sanitary survey program that meets the requirements of paragraph (o)(2)(i) of this section. A “sanitary survey,” as conducted by the State, includes but is not limited to, an onsite review of the water source(s) (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(i) The State must conduct sanitary surveys that address the eight sanitary survey components listed in this section no less frequently than every three years for community water systems, except as provided in paragraph (o)(2)(iii) of this section, and every five years for non-community water systems. The State may conduct more frequent sanitary surveys for any system. The initial sanitary survey for each community water system must be conducted by December 31, 2012, unless the system meets the requirements of paragraph (o)(2)(iii) of this section. The initial sanitary survey for each community water system that meets the requirements of paragraph (o)(2)(iii) of this section and for each non-community water system must be conducted by December 31, 2014. The sanitary survey must include an evaluation of each of the following elements as applicable:

- (A) Source,
- (B) Treatment, including corrosion control treatment and water quality parameters as applicable;
- (C) Distribution system,
- (D) Finished water storage,
- (E) Pumps, pump facilities, and controls,
- (F) Monitoring, reporting, and data verification,
- (G) System management and operation, and
- (H) Operator compliance with State requirements.

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(ii) The State may use a phased review process to meet the requirements of (o)(2)(i) of this section if all the applicable elements of paragraphs (o)(2)(i)(A) through (o)(2)(i)(H) of this section are evaluated within the required interval.

(iii) The State may conduct sanitary surveys once every five years for community water systems if the system either provides at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log inactivation and removal) before or at the first customer for all its ground water sources, or if it has an outstanding performance record, as determined by the State and documented in previous sanitary surveys and has no history of total coliform MCL or monitoring violations under §141.21 of this chapter since the last sanitary survey. In its primacy application, the State must describe how it will determine whether a community water system has an outstanding performance record.

(iv) The State must define and describe in its primacy application at least one specific significant deficiency in each of the eight sanitary survey elements in paragraphs (o)(2)(i)(A) through (o)(2)(i)(H) of this section. Significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

(v) As a condition of primacy, the State must provide ground water systems with written notice describing any significant deficiencies no later than 30 days after the State identifies the significant deficiency. The notice may specify corrective actions and deadlines for completion of corrective actions. The State may provide the written notice at the time of the sanitary survey.

(3) *State practices or procedures for source water microbial monitoring.* The State's primacy application must include a description of the following:

(i) The criteria the State will use under §§141.402(a)(2)(i) and 141.402(d)(2)

of this chapter for extending the 24-hour time limit for a system to collect a ground water source sample to comply with the source water monitoring requirements.

(ii) The criteria the State will use under §§141.402(a)(5)(i) and 141.402(a)(5)(ii) of this chapter to determine whether the cause of the total coliform-positive sample taken under §141.21(a) of this chapter is directly related to the distribution system.

(iii) The criteria the State will use for determining whether to invalidate a fecal indicator-positive ground water source sample under §141.402(d)(1)(ii) of this chapter.

(iv) The criteria the State will use to allow source water microbial monitoring at a location after treatment under §141.402(e)(1) of this chapter.

(4) *State practices or procedures for treatment technique requirements.* As a condition of primacy, the State must verify that significant deficiencies or source water fecal contamination have been addressed. The State must verify within 30 days after the ground water system has reported to the State that it has completed corrective action. The State must verify either through written confirmation from the ground water system or a site visit by the State. Written notice from the ground water system under §141.405(a)(2) of this chapter may serve as this verification. The State's primacy application must include the following:

(i) The process the State will use to determine that a ground water system achieves at least a 4-log treatment of viruses (using inactivation, removal, or a combination of inactivation and removal) before or at the first customer for a ground water source for systems that are not subject to the source water monitoring requirements of §141.402(a) of this chapter because the ground water system has informed the State that it provides at least 4-log treatment of viruses.

(ii) The process the State will use to determine the minimum residual disinfectant concentration the system must provide prior to the first customer for systems using chemical disinfection.

(iii) The State-approved alternative technologies that ground water systems may use alone or in combination with other approved technologies to achieve at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of 4-log inactivation and removal) before or at the first customer for a ground water source.

(iv) The monitoring and compliance requirements the State will require for ground water systems treating to at least 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of inactivation and removal) before or at the first customer for State-approved alternative treatment technologies.

(v) The monitoring, compliance and membrane integrity testing requirements the State will require to demonstrate virus removal for ground water systems using membrane filtration technologies.

(vi) The criteria, including public health-based considerations and incorporating on-site investigations and source water monitoring results the State will use to determine if a ground water system may discontinue 4-log treatment of viruses (using inactivation, removal, or a State-approved combination of inactivation and removal) before or at the first customer.

(p) *Requirements for States to adopt 40 CFR part 141, Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People.* In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer than 10,000 People, must contain the information specified in this paragraph:

(1) *Enforceable requirements.* States must have rules or other authority to require systems to participate in a Comprehensive Technical Assistance (CTA) activity, the performance improvement phase of the Composite Correction Program (CCP). The State must determine whether a CTA must be conducted based on results of a CPE

which indicate the potential for improved performance, and a finding by the State that the system is able to receive and implement technical assistance provided through the CTA. A CPE is a thorough review and analysis of a system's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance. During the CTA phase, the system must identify and systematically address factors limiting performance. The CTA is a combination of utilizing CPE results as a basis for follow-up, implementing process control priority-setting techniques and maintaining long-term involvement to systematically train staff and administrators.

(2) *State practices or procedures.* (i) Section 141.530–141.536—How the State will approve a more representative data set for optional TTHM and HAA5 monitoring and profiling.

(ii) Section 141.535 of this chapter—How the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines, ozone, or chlorine dioxide for primary disinfection.

(iii) Section 141.542 of this chapter—How the State will consult with the system and approve significant changes to disinfection practices.

(iv) Section 141.552 of this chapter—For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, how the State will determine that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of §141.72(b) of this chapter, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. For a system that makes this demonstration, how the State will set turbidity performance requirements that the system must meet 95 percent of the time and

that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

(q) *Requirements for States to adopt 40 CFR part 141 subpart Y—Revised Total Coliform Rule.* In addition to the general primacy requirements elsewhere in this part, including the requirements that State regulations be at least as stringent as federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart Y, must contain the information specified in this paragraph (q).

(1) In their application to EPA for approval to implement the federal requirements, the primacy application must indicate what baseline and reduced monitoring provisions of 40 CFR part 141, subpart Y the State will adopt and must describe how they will implement 40 CFR part 141, subpart Y in these areas so that EPA can be assured that implementation plans meet the minimum requirements of the rule.

(2) The State's application for primacy for subpart Y must include a written description for each provision included in paragraphs (q)(2)(i) through (ix) of this section.

(i) *Sample Siting Plans*—The frequency and process used to review and revise sample siting plans in accordance with 40 CFR part 141, subpart Y to determine adequacy.

(ii) *Reduced Monitoring Criteria*—An indication of whether the State will adopt the reduced monitoring provisions of 40 CFR part 141, subpart Y. If the State adopts the reduced monitoring provisions, it must describe the specific types or categories of water systems that will be covered by reduced monitoring and whether the State will use all or a reduced set of the criteria specified in §§ 141.854(h)(2) and 141.855(d)(1)(iii) of this chapter. For each of the reduced monitoring criteria, the State must describe how the criterion will be evaluated to determine when systems qualify.

(iii) *Assessments and Corrective Actions*—The process for implementing the new assessment and corrective ac-

tion phase of the rule, including the elements in paragraphs (q)(2)(iii)(A) through (D) of this section.

(A) Elements of Level 1 and Level 2 assessments. This must include an explanation of how the State will ensure that Level 2 assessments provide a more detailed examination of the system (including the system's monitoring and operational practices) than do Level 1 assessments through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices.

(B) Examples of sanitary defects.

(C) Examples of assessment forms or formats.

(D) Methods that systems may use to consult with the State on appropriate corrective actions.

(iv) *Invalidation of routine and repeat samples collected under 40 CFR part 141, subpart Y*—The criteria and process for invalidating total coliform and *E. coli*-positive samples under 40 CFR part 141, subpart Y. This description must include criteria to determine if a sample was improperly processed by the laboratory, reflects a domestic or other non-distribution system plumbing problem or reflects circumstances or conditions that do not reflect water quality in the distribution system.

(v) *Approval of individuals allowed to conduct Level 2 assessments under 40 CFR part 141, subpart Y*—The criteria and process for approval of individuals allowed to conduct Level 2 assessments under 40 CFR part 141, subpart Y.

(vi) *Special monitoring evaluation*—The procedure for performing special monitoring evaluations during sanitary surveys for ground water systems serving 1,000 or fewer people to determine whether systems are on an appropriate monitoring schedule.

(vii) *Seasonal systems*—How the State will identify seasonal systems, how the State will determine when systems on less than monthly monitoring must monitor, and what start-up provisions seasonal system must meet under 40 CFR part 141, subpart Y.

(viii) *Additional criteria for reduced monitoring*—How the State will require systems on reduced monitoring to demonstrate:

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(A) Continuous disinfection entering the distribution system and a residual in the distribution system.

(B) Cross connection control.

(C) Other enhancements to water system barriers.

(ix) Criteria for extending the 24-hour period for collecting repeat samples.— Under §§ 141.858(a) and 141.853(c)(2) of this chapter, criteria for systems to use in lieu of case-by-case decisions to waive the 24-hour time limit for collecting repeat samples after a total coliform-positive routine sample, or to extend the 24-hour limit for collection of samples following invalidation. If the State elects to use only case-by-case waivers, the State does not need to develop and submit criteria.

[54 FR 15188, Apr. 17, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 142.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 142.17 Review of State programs and procedures for withdrawal of approved primacy programs.

(a)(1) At least annually the Administrator shall review, with respect to each State determined to have primary enforcement responsibility, the compliance of the State with the requirements set forth in 40 CFR part 142, subpart B, and the approved State primacy program. At the time of this review, the State shall notify the Administrator of any State-initiated program changes (*i.e.*, changes other than those to adopt new or revised EPA regulations), and of any transfer of all or part of its program from the approved State agency to any other State agency.

(2) When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in 40 CFR part 142, subpart B, the Administrator shall initiate proceedings to withdraw primacy approval. Among the factors the Administrator intends to consider as relevant to this determination are the following, where appropriate: whether the State has requested and has been granted, or is awaiting EPA's decision on, an extension under § 142.12(b)(2) of the deadlines for meeting those re-

quirements; and whether the State is taking corrective actions that may have been required by the Administrator. The Administrator shall notify the State in writing that EPA is initiating primacy withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

(3) The State notified pursuant to paragraph (a)(2) of this section may, within 30 days of receiving the Administrator's notice, submit to the Administrator evidence demonstrating that the State continues to meet the requirements for primary enforcement responsibility.

(4) After reviewing the submission of the State, if any, made pursuant to paragraph (a)(3) of this section, the Administrator shall make a final determination either that the State no longer meets the requirements of 40 CFR part 142, subpart B, or that the State continues to meet those requirements, and shall notify the State of his or her determination. Any final determination that the State no longer meets the requirements of 40 CFR part 142, subpart B, shall not become effective except as provided in § 142.13.

(b) If a State which has primary enforcement responsibility decides to relinquish that authority, it may do so by notifying the Administrator in writing of the State's decision at least 90 days before the effective date of the decision.

[54 FR 52140, Dec. 20, 1989, as amended at 60 FR 33661, June 28, 1995]

§ 142.18 EPA review of State monitoring determinations.

(a) A Regional Administrator may annul a State monitoring determination for the types of determinations identified in §§ 141.23(b), 141.23(c), 141.24(f), 141.24(h), and 141.40(n) in accordance with the procedures in paragraph (b) of this section.

(b) When information available to a Regional Administrator, such as the results of an annual review, indicate a State determination fails to apply the standards of the approved State program, he may propose to annul the State monitoring determination by sending the State and the affected PWS