

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 9, 141, 142 and 143**

[FRL-6580-2]

RIN 2040-AD06

**National Primary Drinking Water Regulations: Public Notification Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** Today, EPA is publishing final regulations to revise the general public notification regulations for public water systems to implement the public notification requirements of the 1996 Safe Drinking Water Act (SDWA) amendments. The regulations set the requirements that public water systems must follow regarding the form, manner, frequency, and content of a public notice. Public notification of violations is an integral part of the public health protection and consumer right-to-know provisions of the 1996 SDWA amendments. Owners and operators of public water systems are required to notify persons served when they fail to comply with the requirements of the National Primary Drinking Water Regulations (NPDWR); have a variance or exemption from the drinking water regulations; or are facing other situations posing a risk to public health. EPA is also publishing today revisions to the Consumer Confidence Report (CCR) regulation to be consistent with the final public notification regulation.

**DATES:** Today's rule is effective June 5, 2000. However, the new regulations under Part 141, Subpart Q do not apply to public water systems in States with primacy for the public water system supervision program until May 6, 2002 or until the State-adopted rule becomes effective, whichever comes first. The new regulations under Part 141, Subpart Q also do not apply to public water systems in jurisdictions where EPA directly implements the program until October 31, 2000. Until the new regulations under Part 141, Subpart Q apply, public water systems must continue to comply with the public notification requirements under § 141.32. For purposes of judicial review, this final rule is promulgated as of 1 p.m. Eastern time on May 18, 2000.

**ADDRESSES:** Copies of the public comments received, EPA responses, and all other supporting documents are available for review at the U.S. Environmental Protection Agency; 401 M Street SW, Water Docket (MC-4101), Docket #W-98-19, Room EB 57,

Washington, DC 20460. For an appointment to review the docket, call 202-260-3027 between 9 a.m. and 3:30 p.m. and refer to docket W-98-19.

**FOR FURTHER INFORMATION CONTACT:** The Safe Drinking Water Hotline, toll free (800) 426-4791 for general information about the rule and copies of this document. For technical inquiries, contact Carl B. Reeverts at (202) 260-7273 or e-mail: [reeverts.carl@epa.gov](mailto:reeverts.carl@epa.gov).

**SUPPLEMENTARY INFORMATION:****Acronyms Used in This Rule**

CCR Consumer Confidence Report  
 CWS Community Water System  
 DBP Disinfection Byproduct  
 EPA Environmental Protection Agency  
 HPC Heterotrophic Plate Count  
 IESWTR Interim Enhanced Surface Water Treatment Rule  
 IOC Inorganic Chemical  
 LCR Lead and Copper Rule  
 MCL Maximum Contaminant Level  
 MCLG Maximum Contaminant Level Goal  
 MRDL Maximum Residual Disinfectant Level  
 MRDLG Maximum Residual Disinfectant Level Goal  
 NCWS Non-Community Water System  
 NPDWR National Primary Drinking Water Regulation  
 NTNCWS Non-Transient Non-Community Water System  
 NTU Nephelometric Turbidity Unit  
 OGWDW Office of Ground Water and Drinking Water  
 OW Office of Water  
 PN Public Notification  
 PWS Public Water System  
 SDWA Safe Drinking Water Act  
 SMCL Secondary Maximum Contaminant Level  
 SOC Synthetic Organic Chemical  
 SWTR Surface Water Treatment Rule  
 TCR Total Coliform Rule  
 TT Treatment Technique  
 TWS Transient Non-Community Water System  
 VOC Volatile Organic Chemical

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*Regulated Entities.* Entities potentially regulated by this action are public water systems (PWS). The following table provides examples of the regulated entities under this rule. A public water system, as defined by section 1401 of

SDWA, is “a system for the provision of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.” EPA defines “regularly served” as receiving water from the system sixty or more days per year. EPA has an inventory totaling over 170,000 public water systems nationwide.

TABLE OF REGULATED ENTITIES

Category	Examples of regulated entities
State/Local/Tribal governments .....	Publicly-owned PWSs, such as municipalities; county governments, water districts, water and sewer authorities, state governments, and other publicly-owned entities that deliver drinking water as an adjunct to their primary business (e.g., schools, State parks, roadside rest stops).
Industry .....	Privately-owned PWSs, such as private utilities, homeowner associations, and other privately-owned entities that deliver drinking water as an adjunct to their primary business (e.g., trailer parks, factories, retirement homes, day-care centers).
Federal government .....	Federally-owned PWSs, such as water systems on military bases.

The table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.201 of the rule. If you have questions regarding the applicability of this section to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

**I. Statutory Authority**

Section 114 of the Safe Drinking Water Act Amendments of 1996 (Public Law 104-182), enacted August 6, 1996, amended section 1414(c) of the Act (42 U.S.C. 300g-3(c)). Sections 1414(c)(1) and (c)(2) were significantly revised and require EPA to amend the existing public notification regulations. The amended rules are intended to give consumers more accurate and timely information on violations, taking into account the seriousness of any potential adverse health effects that may be involved. There is no deadline for promulgating the revised public notification rule, but EPA is publishing the final rule today to enable States to coordinate public notification rule adoption and implementation with the ongoing adoption and implementation of the Consumer Confidence Report regulations.

The public notification (PN) provisions were part of the original SDWA in 1974 and were subsequently modified in the 1986 SDWA amendments. The public notification regulations currently in place were promulgated in 1987 and became effective in 1989 (40 CFR 141.32). The existing rule remains in place until the new rule goes into effect.

SDWA Section 1414(c)(1) establishes who must give public notice, under what circumstances a notice must be given, and who must receive the notice. Section 1414(c)(1)(A) requires that all public water systems (PWS) give notice to persons served of any failure to comply with any national primary drinking water regulations (NPDWR), including any required monitoring. Section 1414(c)(1)(B) further requires a PWS to provide a notice when it is operating under a variance or exemption, or when a PWS fails to comply with the requirements of a variance or exemption. Section 1414(c)(1)(C) authorizes EPA, at the Administrator’s discretion, to require PWSs to provide notice of the concentration level of any unregulated contaminant monitored under EPA regulations. Except for the addition of paragraph (C) of section 1414(c)(1), these requirements are unchanged from the previous SDWA.

Section 1414(c)(2) sets the specific requirements for the form, manner, and frequency of a notice. Section 1414(c)(2)(A) requires EPA to issue regulations, after consultation with the States, that prescribe the detailed public notification requirements. The

regulations must provide for different frequencies of notices based on the persistence of the violations and the seriousness of any potential adverse health effects that may be involved. Except for the explicit requirement in the 1996 amendments that EPA consult with the States prior to promulgating the revised regulations, the general directions to EPA for issuing regulations are unchanged.

Section 1414(c)(2)(B) enables States, at their option, to establish alternate requirements with respect to the form and content of the public notice, as long as the alternative State program provides the same type and amount of information as required under the EPA regulations. This section was added as a result of the 1996 amendments.

Section 1414(c)(2)(C) directs EPA to issue regulations which require PWSs to distribute a notice within 24 hours to persons served for violations with potential to have serious adverse effects on human health from short-term exposure. The PWS is also required to send the same notice to the primacy agency and to consult with the primacy agency within the same 24-hour period on any additional public notice requirements. This section is also a new statutory requirement.

Section 1414(c)(2)(D) directs that EPA’s regulations require PWS to provide written notice to each person served for each violation not covered under Section 1414(c)(2)(C). The section specifies that the notice may be: (1) In the first bill, if any, after the violation; (2) in an annual report issued no later than one year after the violation; or (3)

by mail or direct delivery as soon as practicable, but no later than one year after the violation. This section significantly revises and simplifies the previous statutory requirements on the form, manner, and timing of the notice.

Section 1414(c)(2)(E) allows the Administrator the option to require a PWS to give notice to persons served of the results of unregulated contaminant monitoring required by EPA under section 1445(a). EPA recently published a revised unregulated contaminant monitoring regulation (UCMR), which requires some systems to monitor for specified contaminants (64 FR 50556, September 17, 1999). This Section is new under the 1996 SDWA amendments.

Today's final rule fulfills the rulemaking requirements outlined in amended Sections 1414(c)(1) and 1414(c)(2) of the SDWA, as amended.

## II. Regulation Background

The final rule published today was proposed on May 13, 1999 (64 FR 25963). At the same time as the rule was proposed, EPA made available for review a draft Public Notification Handbook, comprised of public notice templates for different violation situations and other aids to public water systems to support implementation of the revised regulation. The final rule is based on input from a broad range of stakeholders from the public and private sectors. The Agency has also actively involved the States as partners in the rule development, as required under Section 1414(c)(2)(A) of the 1996 SDWA amendments.

To gain early input and information from stakeholders on problems with the current public notification program, EPA held a series of stakeholder meetings in Indianapolis, Indiana, Washington, D.C., and Seattle, Washington in late 1997, prior to initiating the rulemaking. EPA also used the findings and recommendations from a June, 1992 GAO report ("Drinking Water Consumers Often Not Well Informed of Potentially Serious Violations" (GAO/RCED-92-135)).

In May and June of 1999, during the public comment period after the rule was proposed, EPA hosted public meetings in Madison, Wisconsin; Washington, DC; Allentown, Pennsylvania; and Phoenix, Arizona. The purpose of the meetings was to take comment on the proposed public notification rule and to discuss (in a workshop-type setting) the draft Public Notification Handbook. The meetings were very well attended and the results greatly benefitted both the final public notification rule and the final Public

Notification Handbook. The final Handbook is expected to be published shortly. Reports from all the meetings are available for review at EPA's Water Docket (W-98-19) or by downloading the documents from EPA's website ([www.epa.gov/safewater](http://www.epa.gov/safewater)).

EPA consulted with the States throughout the development of this rule, as required under section 1414(c)(2)(A). Prior to initiating the rulemaking, EPA met with a group of States, as part of the early involvement meetings set up by the Association of State Drinking Water Administrators (ASDWA), to develop the scope of the process and identify significant issues under the new statute. During the development of the proposed rule, several State drinking water managers participated as members of the EPA regulation workgroup. Their involvement in the workgroup continued through the development of this final rule. EPA also provided briefings to ASDWA on request several times as the rule moved forward.

## III. Significant Decisions Affecting the Final Rule

The final rule published today makes a number of significant changes to what was proposed, based on decisions EPA made in response to the comments received. Section IV of the preamble gives a detailed summary of the final rule and an explanation of the significant changes made in response to comments. Decisions on five key issues affecting the final rule are highlighted below:

### A. List of Violations and Situations Requiring a Tier 1 (24-Hour) Public Notice

EPA received many comments related to the proposed public notice tier level for violations of the Total Coliform Rule (TCR) and the Surface Water Treatment Rule (SWTR). Except for violations where fecal contamination was found, the notice tier level for all the TCR MCL and SWTR TT violations was proposed to be Tier 2 (30-day notice). Over half of the commenters on this issue recommended that the final rule change the notice requirement for at least some of the TCR and SWTR violations to Tier 1. In particular, many of these commenters believed that violations related to exceedances of the turbidity limit were more often than not a strong indicator of harmful drinking water posing a significant risk from short-term exposure. The rest of those commenting on this issue specifically supported leaving as Tier 2 the routine TCR violations and all SWTR violations, including those violations related to exceedances of the turbidity limit.

These commenters believed that turbidity violations were more often than not a false indicator of potential health risk.

After considering all the comments, EPA decided to stay with the proposal requiring a Tier 2 notice for all TCR and SWTR violations (other than where fecal contamination is found under the TCR rule) because EPA believes that an automatic Tier 1 notice requirement is not justified. Routine TCR and SWTR violations (without supporting evidence) are not sufficiently strong or predictable indicators of significant potential of risk from short-term exposure. At the same time, in response to the range of comments related to the appropriate tier level for turbidity exceedances, EPA agrees that certain exceedances of the turbidity limit deserve special attention by the primacy agency for public notification purposes.

Accordingly, the final rule continues to classify all turbidity violations as Tier 2; adds a new requirement that PWSs consult with the primacy agency within 24 hours when exceedances of the maximum allowable turbidity limit occur; enables the primacy agency after the consultation to elevate specific turbidity violations to Tier 1 when warranted; and requires an automatic Tier 1 notice when consultation does not take place within the 24-hour period. Since the significance of the risk to health of an exceedance of the turbidity limits is situational, EPA believes the final rule ensures that notices for turbidity violations indicating an immediate health risk will go out quickly when necessary (based on the immediate consultation requirement) and unnecessary notices will be avoided where the violation indicates no immediate risk to health. These decisions are discussed in greater detail in section IV.F.1 of the preamble.

### B. Standard Health Effects Language Required in Notices for MCL/TT Violations

EPA requested comment on EPA's proposal to use the CCR standard health effects language to meet the public notification requirement. Although most commenters supported keeping the CCR and public notice health effects language the same, a significant minority of commenters believed that the public notice language should be separate from the CCR language because of the different objectives of the public notice. Several commenters also believed that the proposed language for specific violations needed revision, and several offered alternative language that they believed was more accurate and useful.

After considering all the comments, EPA decided to reaffirm its intent to keep the standard health effects language identical for the public notification and CCR rules. Today's rule publishes identical language in the two rules for all the existing regulated contaminants. EPA believes the benefits of having identical core health effects language outweighs the value of tailoring the language to any unique objectives of the public notice. EPA also reviewed the comments offering alternative language for specific violations, with particular focus on whether any of the proposed language was erroneous or misleading. With three exceptions, the final language in today's rule (including the amended CCR rule) is the same language as was proposed. The three exceptions are for fluoride, fecal coliform/E.coli, and several of the disinfectant/disinfection byproducts. These decisions are discussed in greater detail in section IV.I.3 of the preamble.

#### *C. Tier 2 (30-Day) Notice Deadline and Flexibility To Extend in Appropriate Circumstances*

EPA requested comment on the proposed 30-day time period required for the initial Tier 2 public notice, the requirement for a repeat notice of ongoing violations every three months, and the discretion given to the primacy agency in specific circumstances to extend the initial notice to three months or the repeat notice frequency to one year (either on a case-by-case basis or by rule). EPA received a wide range of comments on the proposed 30-day time period, ranging from leaving the current 14-day requirement intact (or even requiring the notice sooner), to support for the 30-day proposed period, to moving the initial notice to 90 or 120 days after the violation. The comments received related to the proposed discretion allowing primacy agencies to extend the deadline also ranged widely, from disagreeing with allowing any discretion at all, to extending the deadline, to requesting that the discretion allowed be more open-ended.

After considering the wide range of comments, EPA retained the proposed 30-day deadline for the initial notice and the 3-month repeat notice frequency in the final rule. But EPA did make changes in the final rule language in response to commenters requesting reconsideration or clarification of EPA's intent in the proposed rule. The final rule redefines how and when a primacy agency would be allowed to extend the initial notice beyond 30 days and under what circumstances the primacy agency could allow less frequent repeat notices for unresolved violations. The final rule

specifically disallows extensions beyond 30 days for unresolved violations or less frequent repeat notice for ongoing TCR and SWTR violations. The final rule also does not allow primacy agencies to set "across-the-board" extensions in their policies and rules that would automatically extend the notice period or frequency of repeat notice for all the other violations.

EPA continues to believe that extensions to the fixed deadlines may be appropriate in certain circumstances, since Tier 2 violation situations are very diverse. Tier 2 situations range from violations that on some occasions may pose potential adverse health effects from short-term exposure (such as SWTR TT violations), to unresolved violations that pose chronic health effects from long-term exposure (such as benzene violations), and to resolved violations no longer posing any potential risk to health. One size does not fit all. The final rule reaffirms this intent to provide flexibility to the primacy agency to deviate from the deadline in EPA's rule where warranted. These decisions are discussed in greater detail in Section IV.G.2 of the preamble.

#### *D. Form and Manner of the Delivery of Public Notices*

EPA requested comment on the revised requirements in the proposal for deciding on the method of delivery of the public notice. The proposed rule would require a water system to: (1) Select at least one minimum method from a short list in the regulation, and (2) provide additional notices by any other method reasonably calculated to reach other persons not reached by the initial method selected. Some commenters believed the minimum list should be expanded to allow, for instance, use of the newspaper as the minimum method, as in the current rule. Other commenters requested that the final rule require that water systems use more than one minimum method, since one method is likely to be an inadequate response in many cases.

After considering the comments, EPA has decided to maintain the basic requirement as proposed: To require water systems to select at least one delivery method from the regulatory list and to take steps reasonably calculated to reach the others served by the system. EPA believes requiring water systems to select at least one minimum method sets a simple, enforceable baseline level of performance for all public notices. This initial step must be supplemented by other actions when the minimum method is not likely to reach all persons served by the system. In the final rule, EPA did not expand the list of

minimum delivery methods it proposed but it does give the primacy agency discretion to select a different minimum method not listed in EPA's rule where warranted. The final rule also includes other minor changes to the rule language to respond to specific requests for clarification of EPA's intent. These decisions for each of the three notice tiers are discussed in greater detail in sections IV.F.3, IV.G.3, and IV.H.3 of the preamble.

#### *E. Consolidating Public Notice Regulations Into New Subpart (40 CFR Part 141, Subpart Q)*

As part of the development of the final rule, EPA conducted a thorough search of Part 141 of the current Code of Federal Regulations (CFR) to identify all the places where a public notification requirement is set or where the current public notification regulations are referenced. This led to a consolidation of several ongoing public notification requirements into the new public notification regulations in Subpart Q of 40 CFR Part 141. The benefits of consolidating all the requirements in one place (Subpart Q) are significant. The final Subpart Q provides in one place a complete and easily referenced set of requirements. This should greatly enhance the understanding of the public notification requirements and lead to greater voluntary compliance. Many of these ancillary public notification requirements are not in the current regulations under § 141.32 and many were not part of the proposed rule revision on May 13, 1999. EPA believes that since they do not substantively alter the existing requirements, they do not require prior notice and opportunity for comment. A summary list of the changes to the CFR are included in Table C in Section IV.L of the preamble.

#### **IV. Discussion of Final Rule**

This section explains the elements of the final regulation, comments requested and comments received on the proposal, and EPA's response to the comments. EPA made a number of significant changes to the proposal based on comments received, clarified some requirements, and edited and reorganized some of the proposed regulatory language to improve the presentation. EPA requested comment on all elements of the proposed regulation. Comments were received from 53 individuals and organizations, representing 22 States, 20 utilities, and 11 environmental organizations and public interest groups. Almost 200 people participated in at least one of the four public meetings hosted by EPA to

take comment on the proposed regulation. The "Response to Comments" document, all the written comments, and the public meeting reports are available for review at EPA's Water Docket (W-98-19). Copies are also available by downloading the documents from EPA's website ([www.epa.gov/safewater/pws/pn/pn.html](http://www.epa.gov/safewater/pws/pn/pn.html)).

*A. Purpose and Applicability*

Today's rule revises the minimum requirements that public water systems must meet regarding the form, manner, frequency, and content of the public notification. Public water systems must give notice to persons served for all violations of National Primary Drinking Water Regulations (NPDWR) and for other situations posing a risk to public health from the drinking water. The term NPDWR Violations is used in the public notification regulations to include violations of the Maximum Contaminant Level (MCL), Maximum Residual Disinfectant Level (MRDL), treatment technique (TT), monitoring, and testing procedure requirements. Public notice is not required, for example, for violation of the Consumer Confidence Report regulation. See Table 1 and Appendix A of the final rule for the NPDWR violations and other situations requiring a public notice. Violations and situations not listed in Appendix A do not require a public notice under Subpart Q.

The rule applies to existing and new public water systems that violate a NPDWR or have other situations that pose a risk to health from the drinking

water. A "public water system," as defined in 40 CFR 141.2, is "a system for the provision to the public of water for human consumption through pipes or \* \* \* other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals daily at least 60 days out of the year." Public water systems regulated under Part 141 may be publicly-owned or privately-owned.

A public water system (PWS) is either a community water system (CWS) or non-community water system (NCWS). A CWS, as defined in § 141.2, means "a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents." A NCWS means "a public water system that is not a community water system."

Non-community water systems are further broken out in the drinking water regulations into transient non-community water systems (TWS) and non-transient non-community water systems (NTNCWS). A NTNCWS is defined by EPA under § 141.2 as "a public water system that is not a community water system and that regularly serves 25 of the same people over six months of the year." An example is a school or business that has its own water well. A TWS is defined by EPA under § 141.2 as "a non-community water system that does not regularly serve 25 of the same persons over six months of the year." An example is a roadside rest stop with its own water well.

For illustration purposes, Table A provides a summary of the number of public water systems, broken out by type of system, the number of these systems with violations during fiscal year 1998, and the total number of violations during the same period. The numbers have been updated from those presented in the preamble of the proposed rule, which were based on FY 1996 information in the Safe Drinking Water Information System (SDWIS) in mid-1997.

Public water systems must meet the requirements of all NPDWRs in effect. Currently, there are NPDWRs in effect covering 80 separate contaminants. EPA has also published final regulations for the Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfection/Disinfectant Byproducts Rule (D/DBP), which will increase the number of regulated contaminants to 88 once they go into effect. There are also other regulations in progress that will increase the number of regulated contaminants to over 90 contaminants by 2002.

Table A shows that 36,467 (21 percent) of the 170,376 PWS had one or more violations in FY 1998. Overall, the 36,467 PWS with violations committed a total of 128,459 violations in FY 1998. Over 86 percent (or 108,459) of these violations were for failure to monitor according to the regulations. Although not all violations require a separate public notice, each violation requires the PWS to comply with the public notification requirements.

TABLE A.—NUMBER OF PUBLIC WATER SYSTEMS (PWS) AND VIOLATIONS IN FY 1998

Type of PWS	Number of PWS	Number of PWS with violations	Number of violations
1. Community Water Systems (CWS) .....	54,367	13,024	64,914
2. Non-transient Non-community Water Systems (NTNCWS) .....	20,255	4,672	27,785
3. Transient Non-community Water Systems (TWS) .....	95,754	18,771	35,760
Total .....	170,376	36,467	128,459

Source: FY 1998 inventory and violation data from Safe Drinking Water Information System (SDWIS), January, 1999.

As shown in Table A, 54,367 (32 percent) of the public water systems are CWSs. CWSs must comply with all NPDWRs in effect. CWSs serve residential populations and range from large municipal systems that serve millions of persons to small systems that serve fewer than 100 persons. CWSs can be further categorized as publicly-owned systems, privately-owned systems, and systems that provide water as an ancillary function of their principal purpose. In FY 1998, 13,024

CWSs committed 64,914 violations.

Approximately 80 percent of community water systems serve fewer than 3,300 people.

Of the public water systems, 20,255 (12 percent) are NTNCWS. Virtually all NTNCWSs provide water as an ancillary function of their principal purpose (for example, schools, day-care facilities, factories). In general, NTNCWSs must comply with the same national primary drinking water regulations as community water systems. During FY

1998, 4,672 NTNCWSs committed 27,785 violations. Approximately 99 percent of NTNCWSs serve fewer than 3,300 people.

The rest of the regulated public water systems (95,754 systems or 56 percent) are TWSs. Virtually all TWSs provide water as an ancillary function of their principal purpose (for example, highway rest stops, gas stations, state parks). TWSs must comply only with specified national primary drinking water regulations where short-term

exposure may pose a health threat—total coliform, nitrate, nitrite, total nitrate and nitrite, and violations of the Surface Water Treatment Rule. TWSs using surface water serving 10,000 persons or more must also comply with the new Interim Enhanced Surface Water Treatment Rule (IESWTR) and certain provisions of the Stage 1 Disinfectant/Disinfection Byproducts (D/DBP) rule when they go into effect starting in 2002. TWSs using surface water serving less than 10,000 persons or using ground water sources must comply with certain provisions of the Stage 1 D/DBP rule by 2004. In FY 1998, 18,771 TWSs committed 35,760 violations. Over 99 percent of TWSs serve fewer than 3,300 people.

#### *B. Effective Dates and Rationale*

*Today's Rule:* The public notification rule provisions under Part 141, Subpart Q become effective June 5, 2000. However, public water systems will continue to comply with the public notification requirements under § 141.32 until the date the new Subpart Q regulations go into effect in each State, Territory, Tribe, or the District of Columbia. EPA has set different compliance deadlines based on whether EPA or the State (or Territory or Tribe) has primary enforcement authority ("primacy") for the public water system supervision program. As of today's rule, States (or Territories) have primacy in all jurisdictions except Wyoming, the District of Columbia, and on Indian lands. EPA directly implements the public water system supervision programs in Wyoming, Washington, D.C., and on all Indian lands. The term "primacy agency" is used in the final public notification rule to refer to either EPA or the State (or Territory or Tribe) in cases where EPA, or the State, Territory, or Tribe, exercises primary enforcement responsibility for the Subpart Q public notification. The term "State" is used throughout the rule to apply to States, Territories, Tribes, and the District of Columbia.

Public water systems in primacy States must continue to comply with the public notification requirements under § 141.32 until May 6, 2002 or until the date the State's revised regulation under its approved primacy program becomes effective, whichever comes first. The two-year period matches the maximum time period allowed for States under the

primacy regulations (40 CFR Part 142, Subpart B) to adopt new and revised National Primary Drinking Water Regulations (NPDWRs). EPA believes it is appropriate to make the effective date in primacy States consistent with the basic two-year time primacy revision period. Coordinating the phase-in of the new public notification requirements with the State adoption of the revised regulations in each State will avoid the potential confusion of having different State and EPA requirements in effect in the State at the same time. Although States are free to wait the full two years to adopt the new rule, EPA strongly encourages States to consider early adoption in order to combine the public notification rule and the Consumer Confidence Report rule into one primacy revision package or to otherwise take early advantage of the efficiencies in today's rule.

Public water systems in jurisdictions where the drinking water program is directly implemented by EPA must continue to comply with the public notification requirements under § 141.32 until October 31, 2000. EPA believes that setting the compliance date for the new rule at 180 days after publication is appropriate and achievable for public water systems in the jurisdictions directly implemented by EPA. Six months after publication of the final rule is sufficient time for EPA and the water systems to adjust their operating procedures to comply with the new requirements. Early implementation will enable the water systems to take advantage of the efficiencies in the new regulation as early as possible, leading to a more effective public notification program.

In practical terms, the different compliance dates allowed under this rule mean that the new requirements will go into effect at different times nationwide, based on the speed of the State adoption of the new requirements and whether EPA or the State directly implements the program. Regardless of the State primacy situation, the latest the rule will go into effect in any State will be May 6, 2002, even in those States that request and are granted an extension to adopt the revised regulation beyond the basic two-year primacy revision time period.

The final public notification rule applies to new and existing violations and situations after the date public

water systems must comply with the new rule. However, EPA is not requiring that public water systems provide initial public notices under the new rule where the initial public notice has already been given under the regulations in place at the time. However, unless the primacy agency makes a different determination on a case-by-case basis, the new rule will apply to repeat notices for existing violations or for any public notice requirements applying to ongoing violations after the new rule is in effect.

*Comments Requested on Proposal:* EPA had asked for comment on the proposed effective dates and solicited suggestions on other options to put the new regulations into effect earlier. Several comments were received on the proposed effective date, all in support of the two-year period allowed for water systems in primacy States.

*EPA Response to Comments:* The two-year effective date in the final rule for water systems in primacy States is identical to what was proposed. The final rule does, however, change the proposed effective date for water systems in drinking water programs directly implemented by EPA from 90 days after publication to 180 days after publication. The shift from 90 days to 180 days was a result of a strong concern raised during discussions on the proposed rule that 90 days gave EPA insufficient time to effectively make the transition from the existing program to the new program in areas where it directly implements the program. EPA believes the change to 180 days in the final rule better fits the time period needed to shift to the new program under the revised regulations.

#### *C. Summary of Changes to Current Public Notification Requirements*

The final rule is a significant revision from the public notification regulation under § 141.32 of this part, which has been in effect since 1989. The regulation under § 141.32 is referred to throughout the preamble as the "current rule." The reason EPA chose to refer to the rule under § 141.32, which will be replaced by today's action, as the "current rule" is because it will continue to apply to some water systems for up to two years after publication of today's rule. Table B is a summary of the major differences between the current rule and the final revised rule.

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN REVISED PN RULE AND CURRENT RULE

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Revised PN rule (part 141, subpart Q)
1414(c)(1), Each owner or operator of a PWS shall give notice of NPDWR violations, levels of unregulated contaminants, and existence of a variance or exemption to the persons served by the system.	(§ 141.32(a) and (b)) Owner or operators of PWSs must notify persons served by the system for the following violations/ situations: Maximum contaminant levels (MCL) Treatment technique Testing procedure Monitoring Operation under a variance or exemption Noncompliance with variance or exemption schedule.	(§§ 141.201(a) and 141.202(a)) Includes violations from current rule and adds broader definition of waterborne disease outbreak and other waterborne emergencies, adds new IESWTR and DBP standards, moves fluoride SMCL and nitrate exceedances of the MCL for NCWS when allowed by primacy agency under 141.11(d), failure to take confirmation sample for nitrate, and unregulated contaminant monitoring public notices from other parts of the regulations. Adds a new Appendix A to the rule listing all violations and situations where public notification is required. (§ 141.201(c)) Requires water systems to notify owners or operators of consecutive systems. Also allows primacy agencies to permit systems to limit distribution of the notice if the violation is in a portion of the distribution system that is physically or hydraulically isolated from other parts of the system.
1414(c)(2)(A), Manner, frequency, and form are prescribed based on seriousness and frequency of violations.	(§§ 141.32(a)(1)(iii) and 141.32(a) and (b)) There is a three-tier system, although tiers are not named. Public notices are divided into three tiers: violations of MCLs that may pose an acute risk to human health; MCLs, treatment technique, and variance or exemption schedule violations; and other violations (including monitoring) and operation under a variance or exemption.	(§ 141.201(b)) Tiers are defined based on seriousness of the violation or situation and of potential health effects, and all violations or situations are assigned to a tier (Appendix A). <i>Tier 1</i> notice for violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure; <i>Tier 2</i> notice for all other violations or situations with potential to have serious adverse effects on human health; and <i>Tier 3</i> notice for all other violations and situations not included in Tier 1 and Tier 2.
1414(c)(2)(C)(iii), Notice must be provided to Administrator or primacy agency.	(§ 141.31(d)) System must provide a copy of the notice to the State within 10 days.	(§ 141.31(d)) Revised to require PWS to submit to the primacy agency within 10 days a certification, with copies of the notices, for both the initial notice cycle and all repeat notice cycles.
1414(c)(2)(C)(1), For violations with potential to have serious adverse effects on human health as a result of short-term exposure, notice must be distributed as soon as practicable but no later than 24 hours after the occurrence of the violation.	(§ 141.32(a)(1)(iii)(A)–(D)) <i>Acute violations</i> include: (1) Any violations specified by State (2) Nitrate/nitrite MCLs (3) Fecal coliform/ <i>E. coli</i> (4) Waterborne disease outbreak in unfiltered systems subject to Surface Water Treatment Rule.	(§§ 141.202(b)(2) and 141.203(b)(3)) New sections added to require consultation with primacy agency within 24 hours for violations or situations requiring a Tier 1 notice and for violations of the turbidity MCL of 5 NTU or a treatment technique resulting from a single exceedance of turbidity limits. (§ 141.202) <i>Tier 1 notice</i> —Violations and situations include those defined as acute in the current rule, plus: an expanded definition of waterborne disease outbreak to include all water systems and to add other waterborne emergencies; violations of the maximum turbidity limit where determined by the primacy agency or where consultation between the system and the primacy agency does not occur within 24 hours; chlorine dioxide MRDL violation under new DBP rule where samples taken in the distribution system exceed the standard or where repeat samples are not taken in the distribution system when required; violation of the testing procedures to determine if fecal coliform is present after any repeat sample tests positive for coliform; violations of combined nitrate and nitrite MCL; and failure to take a confirmation sample for nitrate within 24 hours when initial sample exceeds MCL.

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN REVISED PN RULE AND CURRENT RULE—Continued

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Revised PN rule (part 141, subpart Q)
1414(c)(2)(D)(1), Regulations shall specify notification procedures for violations other than Tier 1; notice shall be in written form.	<p>Provide copy of notice to radio and TV stations within 72 hours, or by posting or hand delivery within 72 hours. Posting must continue as long as the violation persists.</p> <p>Additional notices: by newspaper within 14 days or posting or hand delivery if no newspaper is available; by mail within 45 days (may be waived if state determines violation has been corrected); and repeat notice every three months thereafter.</p> <p>(§ 141.32(a)) For MCL, treatment technique, and variance or exemption schedule violations.</p> <p>By newspaper within 14 days or by posting or hand delivery if no newspaper is available.</p> <p>Additional notices: by mail within 45 days (may be waived if State determines violation has been corrected), and repeat notice every three months thereafter by mail or hand delivery.</p> <p>(§ 141.32(b), For monitoring and testing procedure violations, and operation under variance or exemption.</p>	<p>Under § 141.209, Tier 1 notice is also required for exceedance of the nitrate MCL by NCWS where permitted to exceed the MCL by the primacy agency.</p> <p>Timing revised to require notice within 24 hours; must use at a minimum electronic media, posting, hand delivery, or other method approved by the primacy agency, plus any additional methods necessary to reach all persons served.</p> <p>Revised to not require additional notices for same violation, deferring instead to the primacy agency to set additional requirements (including additional notices) on a case-by-case basis.</p> <p>(§ 141.203) <i>Tier 2 notice</i> includes those described in § 141.32(a) of the current rule, plus the new standards under the IESWTR and DBP rules, and serious and persistent monitoring and testing procedure violations, as determined by the primacy agency.</p> <p>Revised under § 141.203(b) to require notice within 30 days unless the primacy agency allows an extension of up to three months in appropriate circumstances. Extensions will not be allowed for any unresolved violations, nor will automatic "across-the-board" extensions for the remaining violations be allowed. Unless primacy agency directs otherwise, CWS must use mail or direct delivery, and other methods reasonably calculated to reach persons served. NCWS must use posting (for as long as violation persists or for at least seven days), direct delivery, or mail, and other methods reasonably calculated to reach persons served. Also requires systems to consult the primacy agency within 24 hours of learning of an exceedance of maximum turbidity limits.</p> <p>The initial notice does not require multiple methods of delivery unless needed to reach persons served. Repeat notice required every three months where violation persists, unless the primacy agency determines less frequent repeat notice (no less frequent than annually) is warranted in appropriate circumstances. Primacy agencies may not allow less frequent repeat notices for microbiological violations, nor will automatic "across-the-board" decreases in frequency be allowed for the remaining violations. Method of delivery for repeat notice will be the same as that required for initial notices.</p> <p>(§ 141.204) The violations and situations requiring a <i>Tier 3 notice</i> are the same as those described in § 141.32(b) of current rule.</p> <p>Tier 3 notice is also required to announce the availability of unregulated contaminant monitoring results as required under § 141.207; and for exceedances of the SMCL for fluoride as required under § 141.208.</p>

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN REVISED PN RULE AND CURRENT RULE—Continued

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Revised PN rule (part 141, subpart Q)
Notice to new billing units or new customers (not in statute).	<p>By newspaper within three months of the violation or the granting of variance or exemption, or by hand delivery or posting if no newspaper is available. State may allow less frequent public notice (up to 1 year) for minor monitoring violations.</p> <p>Repeat notice every three months thereafter by mail or hand delivery.</p> <p>(§ 141.32(c)) Community water system must give a copy of the most recent public notice for any outstanding violation of any MCL, any treatment technique requirement, or any V&amp;E schedule.</p>	<p>Revised to require notice within one year. Unless primacy agency directs otherwise, CWS must use mail or direct delivery, and other methods reasonably calculated to reach persons served. NCWS must use posting (for as long as violation persists or minimum of seven days), direct delivery, or mail, and other methods reasonably calculated to reach persons served. Consumer Confidence reports (CCRs) or other annual reports may be used, as long as notice in CCR meets PN requirements.</p> <p>Repeat notice annually; method of delivery must be the same as in the initial notice.</p> <p>(§ 141.206) Revised to require notice for any outstanding violation or situation requiring notice, including monitoring and testing procedure violations.</p>
1414(c)(2)(C)(ii) and 1414(c)(2)(D)(ii), Content of notices.	<p>(§ 141.32(d)) Each notice must provide a clear explanation of the violation, potential health effects, population at risk, steps being taken to correct violation, telephone number of the owner, operator, or designee of the public water system, necessity for seeking alternative water supplies, if any, and any preventive measures consumers should take until the violation is corrected.</p> <p>(§ 141.32(e)) Systems must include standard health effects language for MCL, treatment technique, variance or exemption schedule violations, and operation under a variance or exemption.</p>	<p>Revised to require non-community water systems to keep notice posted for as long as violation persists, even if notice was initially hand-delivered or otherwise distributed.</p> <p>(§ 141.205) Adds “when violation or situation was found” and “when system expects to return to compliance or resolve the situation” to content elements. New requirement to include “contaminant level.” Adds name and business address to phone number of operator. Adds new element requiring standard language, where applicable, asking bill paying customers to provide copies of notice to other persons served who may not have received the notice directly from the PWS.</p> <p>Also, adds minimum content elements for notices of operation under variance or exemption, which parallel CCR requirements. No longer requires health effects language for operation under a variance or exemption.</p> <p>(New Appendix B) Revises standard health effects language, using language identical to the CCR rule.</p>
Providing notice in other languages (not in statute).	<p>(§ 141.32(d)) Systems must provide multilingual notices “where appropriate”.</p>	<p>Adds standard language for monitoring and testing procedure violations.</p> <p>(§ 141.205(c)(2)) Revised to require that notices contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address so people can obtain a translated copy or request assistance in the appropriate language, if system serves a large proportion of non-English speaking consumers. Systems must determine what constitutes a “large proportion” if primacy agency does not make a determination.</p>
Special notice for exceedance of Fluoride Secondary Maximum Contaminant Level (SMCL) (not in statute).	<p>(§ 141.32(f)) Notice of SMCL exceedances between 2 mg/l and 4 mg/l (the MCL level) required within 12 mos.; shall contain language in § 143.5(b).</p>	<p>(§ 141.208) Moved to new Subpart Q (deletes § 143.5); mandatory language is simplified.</p>
Special notice for exceedance of nitrate MCL for NCWS (not in statute).	<p>Public notice is required as part of § 141.11(d). § 141.11(d) allows NCWS to have nitrate levels above MCL (10 mg/l), up to 20 mg/l, if State approves and if they post and meet other conditions.</p>	<p>(§ 141.209) Incorporates public notice requirements in § 141.11(d) to new Subpart Q, requiring the PN to follow Tier 1 notice requirements and content requirements in § 141.205; changes § 141.11(d) to cross reference the Subpart Q PN requirement.</p>

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN REVISED PN RULE AND CURRENT RULE—Continued

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Revised PN rule (part 141, subpart Q)
Public notice by primacy agency (not in statute).	(§ 141.32(g)) The State may give notice to the public on behalf of the public water system if the State complies with the requirements of § 141.32. However, the owner or operator of the public water system remains legally responsible.	(§ 141.210 ) No change.
1414(c)(2)(E) Administrator may require notice of levels of unregulated contaminants monitored under section 1445(a).	(§ 141.35(d)) Written notice of availability of results within three months after system receives results (surface water systems only need to notify after the first quarter of monitoring).	(§ 141.207) Revised to require notice of availability of results within 12 months, following Tier 3 delivery requirements; deletes § 141.35(d).
1414(c)(2)(B) States may establish alternative notification requirements.	(§ 142.10(a)) Authority to require public water systems to give public notice that is no less stringent than the EPA requirements in §§ 141.32 and 142.16(a). (§ 142.16(a)) If the state chooses to decrease notice frequency for minor monitoring violations it must submit to EPA the criteria used to decide the decreased frequency and which violations are minor, and it must submit the new notice requirements.	(§ 142.10(a)) No change.  (§ 142.16(a)) Deletes current requirement. Allows primacy agencies to establish alternative public notification requirements with respect to form and content of notice, consistent with 1414(c)(2)(B) of 1996 SDWA amendments, as long as they provide same type and amount of information. New § 142.16(a)(2) added to require State to include in primacy program enforceable requirements and procedures when State augments its program to take advantage of the flexibilities built into EPA's rule. List of special primacy requirements included in § 142.16(a)(2).

#### D. "Plain Language" Format of Final Rule

*Today's Rule:* As discussed in the preamble to the proposed rule, EPA has formatted Subpart Q of these regulations in question-and-answer format and made other changes in format and language, consistent with the requirements outlined in the June 1, 1998 memorandum sent by President Clinton to all Federal agencies, to take steps to improve both the clarity and comprehension of regulatory language. The intent of "plain language" is to produce rules which are clear, concise, straight-forward, understandable, and enforceable without extensive "legalese." The current public notification rule, in particular, has been criticized by the General Accounting Office (GAO) and others as being too complex and confusing to implement. This criticism was viewed by GAO in its 1992 report as one of the reasons the public notification process is ineffective.

*Comments Requested on Proposal:* EPA requested comment on the new format and solicited ideas on ways to make the public notification regulation more readable by the regulated community. In general, commenters supported the new format, finding it a significant improvement from the current rule.

*EPA Response to Comments:* The final rule is consistent with the overall "plain language" strategy incorporated into the proposed rule. EPA has made minor formatting and language changes in response to specific comments that improve the overall presentation.

#### E. General Provisions of Final Rule (§ 141.201)

Today's final rule replaces the existing public notification regulation with an entirely new subpart (40 CFR Part 141, Subpart Q), which incorporates the new provisions under sections 1414(c)(1) and (c)(2) of the SDWA, as amended in 1996. The final rule streamlines the requirements to more effectively meet the objectives of the public notification process. Today's final rule revises the existing public notification requirements:

- To tailor the public notification requirements to address the potential risk from the violations, with particular focus on the notice for violations posing the greatest potential risk to public health;
- To simplify the requirements and make them more self-implementing, allowing water systems to understand and implement their public notification obligation without further interpretation;

- To give greater latitude to States to develop alternative programs to meet their unique needs and to provide greater flexibility to public water systems to tailor distribution of the notice to best reach persons served;

- To better integrate the public notification requirements for less serious violations with the annual Consumer Confidence Report (CCR) for community water systems and with other annual reporting mechanisms for non-community water systems; and

- To reduce the burden on water systems of complying with the public notification requirements.

#### 1. Who Must Give Public Notice?

*Today's Rule:* The final rule under § 141.201(a) requires owners and operators of public water systems to give notice to persons they serve for all violations of national primary drinking water regulations (NPDWRs), when they are operating under a variance or exemption (or violate conditions of the variance or exemption), and for waterborne emergencies and other specified situations posing a potential risk to public health. The violation categories and other situations requiring a public notice are identified in the final rule in Table 1 to § 141.201 and Appendix A of Subpart Q.

The final rule makes several changes to the current public notice regulatory language to improve the clarity and understanding of when a public notice is required. Appendix A provides a complete reference guide (including regulatory citations) to all violations and situations requiring a public notice. Not all violations under the EPA drinking water regulations require a public notice. For instance, public notices are not required for violations of the reporting regulations under § 141.31 and other Part 141 sections. Public notices are also not required for violations of the Consumer Confidence Report regulations under Subpart O of Part 141. Appendix A will be updated as new NPDWRs are promulgated or when other situations arise where a public notice is required. A public notice is only required for the violations or other situations listed in Appendix A.

Several other changes were made to Table 1 to § 141.201 in today's rule modifying the violations and situations requiring a public notice:

- Special public notice provisions already required in the current regulations, but not included in the current public notification regulations under § 141.32, are added to the list of violations and situations requiring a public notice in Table 1 to § 141.201. These special public notice provisions include: The notice requirements for exceedance of the fluoride secondary maximum contaminant level (SMCL) under the existing § 143.5; the requirement to give notice of the availability of unregulated contaminant monitoring results originally found under § 141.35; and the public notice required of non-community water systems under the current § 141.11(d) for exceedances of the MCL of 10 mg/l for nitrate (up to 20 mg/l) without receiving a violation. These changes are discussed in Section IV.J of the preamble related to special public notices.

- The existing requirement to give notice for waterborne disease outbreaks under the Surface Water Treatment Rule is broadened and clarified to include a requirement for a public notice for any waterborne disease outbreak and other waterborne emergencies. This change is discussed in Section IV.F.1 of the preamble related to Tier 1 public notices.

- A new requirement is added that explicitly incorporates additional public notice requirements as determined by the primacy agency for other violations and situations not explicitly listed in Appendix A of Subpart Q. This enables the primacy agency to broaden the applicability of the public notice

regulation to any situation it deems important.

*Comments Requested on Proposal:* EPA asked for comment on the proposal to add explicit regulatory language enabling the primacy agency to require public notification for other situations it believes have the potential for serious health risk. EPA also asked for comment on its proposal to present in tabular form all the situations requiring a public notice and its plans to update Appendix A as new rules are published. In general, commenters strongly supported the addition of Appendix A to the revised regulation and the flexibility explicitly allowed the primacy agency to require public notices beyond those listed in Appendix A.

*EPA Response to Comments:* The final rule is consistent with what was proposed. Other than several minor formatting and wording changes to improve the presentation, the only significant change to what was proposed was to revise the proposed Table 1 to § 141.201(a) to conform to the changes made in other sections of the rule. Table 1 to § 141.201(a) now includes other situations requiring a Tier 1 notice under § 141.202(a) that were added in response to comments. These changes to the Tier 1 requirements are discussed in Sections IV.F.1 and IV.J of the preamble.

## 2. What Type of Public Notice Is Required for Each Situation?

*Today's Rule:* The final rule under § 141.201(b) divides the public notice requirements into three tiers:

- Tier 1 Public Notice, for violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure;
- Tier 2 Public Notice, for other violations and situations with potential to have serious adverse effects on human health; and
- Tier 3 Public Notice, for all other violations and situations requiring a public notice not included in Tier 1 and Tier 2.

The form, manner, and frequency of the public notice is determined by the tier to which the violation or situation is assigned. Appendix A assigns each violation and situation to one of the three tiers. The specific requirements for the public notice in each tier are defined under §§ 141.202, 141.203, and 141.204.

EPA is establishing the three-tier approach to public notification to be consistent with the intent of the new public notification provisions in the 1996 SDWA amendments. Section 1414(c)(2)(A) directs the Administrator to issue regulations that provide for different frequencies of notice based on

the differences between intermittent and persistent violations and the seriousness of any potential adverse health effects. Section 1414(c)(2)(C) sets very specific requirements for violations with the potential to have serious adverse effects on human health from short-term exposure. This includes a new requirement that such notices be distributed to persons served no later than 24 hours after the occurrence of the violation. Section 1414(c)(2)(D) requires EPA to define in its regulations the notification procedures for all violations not included under subparagraph (C). This section requires that such procedures specify that the water system provide written notice to each person served in either: (1) The first bill prepared, if any, after the violation; (2) in an annual report issued no later than one year after the violation; or (3) by mail or direct delivery as soon as practicable, but no later than one year after the violation.

*Comments Requested on Proposal:* EPA requested comment on whether a two-or three-tiered structure would be more appropriate for the final EPA regulation and what the advantages and disadvantages of the preferred tier structure would be. All but three of the twenty commenters supported the three-tier structure.

*EPA Response to Comments:* EPA made no changes in the final rule to what was proposed under Section 141.201(b). In response to the three commenters preferring a two-tier notice structure, EPA believes that a three-tier approach is more appropriate than a two-tier approach because it provides more effective tailoring of the public notice requirements based on the seriousness of any potential health effects and is still relatively simple and straightforward to implement. Violations span a wide range of potential health risks. A "middle-tier" public notice requirement between the 24-hour notice and the annual notice is appropriate for those lower-tier violations and situations that may have the potential for serious adverse effects on human health, but are not significant or urgent enough to require an emergency notice. EPA believes a three-tier system of public notification effectively separates the form, manner, content, and frequency of public notice based on the seriousness of any potential adverse health effects. The three-tier system also meets the clear objectives and purposes of public notification, is simple and straightforward to implement, and meets the requirements of the statute.

### 3. Who Must Be Notified?

*Today's Rule:* The final rule under § 141.201(c) requires that each public water system provide public notice to persons served by the water system. EPA believes that consumers have a right to know in a timely manner whenever violations occur that may affect them, to allow them to make their own choices about using drinking water, based on their own perceived risk. This is consistent with the statutory requirement under the SDWA, which requires that public notice be provided to "the persons served by the system." (SDWA, Section 1414(c)(1)). In response to comments on the proposal, EPA in the final rule has clarified the requirement in three ways.

First, EPA interprets the obligation of the water system to reach persons served to extend beyond bill-paying customers and service connections to all consumers of the system's drinking water. This is defined in the final rule to require that water systems provide the notice in a form and manner "reasonably calculated to reach persons served." EPA recognizes that reaching the persons served beyond the bill-paying customers and service connections may pose a challenge to some water systems. Some consumers (such as apartment dwellers, other renters, university students, prison inmates, and condominium residents) may not be the persons paying the water bill or be otherwise linked to the service connection address. The form and manner of the public notice necessary to reach all the persons served depends on the local situation. To illustrate how EPA interprets the breadth of this obligation, EPA has added examples in the rule language under §§ 141.202(c), 141.203(c), and 141.204(c) outlining what additional efforts it expects of public water systems to reach persons other than the bill-payers or the service connection addresses.

EPA has also added standard language under § 141.205(d)(3) for water systems to use in their public notices (where applicable) to encourage those receiving the notice to distribute it to other persons who may drink the water. Examples where the use of this standard distribution language would apply include notices that are sent to apartment and condominium managers, building managers or physical plant superintendents, or others who receive the notice who provide drinking water to others.

Second, language under § 141.201(c)(a)(1) has been added to define the public notice obligation of public water systems that sell or

otherwise provide drinking water to other public water systems. These "parent" systems are responsible for providing public notice of the violation or situation to the owner or operator of the "consecutive" systems to whom they sell water, but they are not required under the rule to distribute the notice to persons served by the consecutive system. Although different public notice arrangements are sometimes made between the parent and consecutive system, the consecutive system is the water system responsible under this rule for delivering the notice to the persons it serves. Although the legal obligation is clear under the rule, EPA recommends that each consecutive water system in its contract with the parent system agree on the most effective approach for distributing public notices. EPA will give examples of such agreements in the Public Notification Handbook.

Third, language under § 141.201(c)(2) has been added to enable the primacy agency, at its option, to make exceptions to the system-wide notice requirement if specific regulatory criteria are met. The new language will allow a water system to limit distribution of the notice to those persons served by a portion of the distribution system impacted by the violation, where the water system is able to demonstrate that the affected portion of the system is physically or hydraulically isolated from all other parts of the distribution system. This replaces the more limited discretion given to primacy agencies in the current rule, which allows less than system-wide notice for violation of EPA's chemical standards only when the elevated contaminant levels are contained in a separable portion of the distribution system with no interconnections. Today's rule broadens the allowable exceptions to a system-wide notice by adding "hydraulically isolated" to the exception criteria. Although not open-ended, the amended language recognizes situations other than physical separation where there is clear and certain evidence that persons served by a portion of the distribution system have no chance of being affected by the violation.

To meet EPA's criterion that a portion of the distribution system must be physically isolated to be eligible for an exception to the system-wide notice requirement, a system must show the primacy agency that the affected portion is separated from other parts of the distribution system with no interconnections. Because of the physical separation, the elevated contaminant levels contained in only that portion of the system would have

no bearing on the contaminant levels in other parts of the system. In such a situation, EPA believes a primacy agency may permit an exception to system-wide notice. These exceptions to system-wide notice are already allowed in the current rule for violations of the chemical standards under §§ 141.23(i)(4), 141.24(f)(15)(iii), and (h)(11)(iii). Today's rule incorporates this exception criteria into § 141.201(c)(2).

To meet EPA's criterion that a portion of the distribution system must be hydraulically isolated to be eligible for an exception to the system-wide notice requirement, a system must show that the water in the affected portion is separated from the water in all other parts of the distribution system because the projected water flow patterns and water pressure zones effectively isolate the water to that portion of the system. This hydraulic isolation can result from the design of the distribution system (e.g., pressure zones, backflow prevention devices) or be created through system operation (e.g., flow control). An example associated with the Total Coliform Rule is the presence of *E. coli* downstream from a pipe break that the system can demonstrate, to the satisfaction of the primacy agency, led to the entry of fecal contamination, and that the water downstream from the break does not flow into any other part of the distribution system. Another example, related to a chemical standard (e.g., nitrate, fluoride), is a situation where contaminant levels exceeding the MCL are shown to be from a single source and found only in the distribution main leading from that source. The water system in this situation may be eligible for an exception if it could demonstrate, using other monitoring information and distribution flow modeling, that exceedances above the MCL could only be found in the single distribution main because of water flow patterns and pressure zones (the "hydraulics") under all operational scenarios. For both of these examples, the decision on whether to permit an exception to the system-wide notice requirement rests solely with the primacy agency.

Primacy agencies seeking authority to grant exceptions to the system-wide notice requirement must meet the special primacy conditions under § 142.16(a)(2) in their approved primacy program. Decisions by the primacy agency to permit exceptions must be in writing and otherwise documented based on use of the regulatory criteria in today's rule. EPA recognizes that there are other situations where the water system has evidence that not all the

persons served by the system are affected equally by the violation. In these situations, EPA expects the water system to tailor the language in the public notice it sends system-wide, to communicate who is at most risk from the violation and who is at minimal risk. All such notices, unless the water system is granted an exception by the primacy agency, are required to be distributed system-wide according to the requirements in this part.

*Comments Requested on Proposal:* EPA asked for comments on its interpretation of who must be notified under the SDWA and the proposed rule. A substantial number of commenters recommended that EPA allow exceptions to the proposed (and current) requirement that the notice go to persons served by the entire system, particularly where it is clear that only a portion of the persons served are affected by the violation. Other commenters asked EPA to clarify how far the water system must go to ensure that its notice reaches all persons served.

*EPA Response to Comments:* The final rule reaffirms the statutory language that water systems provide the public notice to persons served by the entire system. In response to comments, however, the final rule now includes language enabling the primacy agency, at its option, to make exceptions to the system-wide notice requirement where the violation is shown to be due to exceedances in a portion of the system that is physically or hydraulically isolated from the rest of the system. EPA also added language in the final rule to respond to requests that EPA clarify public notice responsibilities for persons selling water to other water systems (*i.e.*, "consecutive systems").

Several commenters requested that EPA change the distribution requirement from "persons served by the system" to "persons affected," to allow less than system-wide notice where the available evidence indicates that the violation affects only a portion of the persons served by the system. EPA disagrees with changing the baseline requirement to distribute notices of all violations system-wide, because EPA strongly believes that consumers have a right-to-know in a timely manner when violations occur that may affect them. In situations where evidence indicates that not all persons served are affected equally by the violation, EPA expects the water system to tailor the language in the public notice to communicate who is at most risk and what actions they should take, not to limit the notice distribution based on relative risk. EPA does agree,

however, that exceptions to the system-wide notice distribution may be warranted when the contaminant exceedances are shown to be contained exclusively in an isolated portion of the distribution system. In such a situation, only those persons served by that portion of the system are affected. Accordingly, EPA has added language in the final rule allowing the primacy agency to grant exceptions, at its option, where the violation is shown to be due to exceedances in a portion of the system that is physically or hydraulically isolated from the rest of the system.

Several other commenters gave examples of situations where they believed a system-wide notice is unwarranted. EPA believes the language added in the final rule effectively addresses these comments by allowing exceptions to the system-wide requirement, at the primacy agencies discretion, when the system can demonstrate that specific engineering and hydraulic criteria are met. EPA's intent in adding the language is explained earlier in this preamble section. EPA's detailed response to specific comments on this provision is contained in the "Response to Comments" document contained in the docket for this rule.

*F. Form, Manner, and Frequency of the Tier 1 Public Notice: Violations and Situations With Significant Potential to Have Serious Adverse Effects on Human Health as a Result of Short-Term Exposure (§ 141.202)*

1. Tier 1 Violations and Situations

*Today's Rule:* The final rule under § 141.202(a) requires a Tier 1 public notice for specific violation categories and other situations. The list of violations requiring a Tier 1 public notice in today's rule includes all violations in the current rule defined as posing acute health effects. In addition, a number of new violations and situations have been added to those already required under the current regulation. Tier 1 notice requirements under the final rule are required for:

- Violation of the MCL for total coliform, when fecal coliform or *E. coli* are present in the water distribution system, or when the water system fails to test for fecal coliforms or *E. coli* after any repeat sample tests positive for coliform. Failure to test for fecal coliform or *E. coli* is not defined as an acute violation requiring a 72-hour notice in the current rule.
- Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, or when a water system fails to take a

confirmation sample within 24 hours of the system's receipt of the first sample showing exceedance of the nitrate or nitrite MCL. Violation of the total nitrate and nitrite MCL and the failure to take a required confirmation sample are not defined as acute violations in the current rule.

- Exceedance of the nitrate MCL by non-community water systems (NCWSs), where permitted to exceed the MCL by the primacy agency under the criteria established under § 141.11(d). The authority given by primacy agencies under § 141.11(d) to allow NCWS to exceed the MCL level of 10 mg/l (up to 20 mg/l) is unchanged by today's action. The final public notification rule incorporates the public notice requirements for qualifying NCWSs into a new special public notice under § 141.209. Qualifying NCWS must follow the Tier 1 notice requirements. This existing requirement is not explicitly incorporated into the current public notice rule.

- Violation of the MRDL for chlorine dioxide, where one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL. A Tier 1 notice is also required when the water system does not take required samples in the distribution system. These are new Tier 1 notice requirements incorporated from the Stage 1 D/DBP rule published on December 16, 1998 (63 FR 69390).

- Violation of the turbidity MCL under § 141.13(b) or a violation of the SWTR and IESWTR treatment technique requirements resulting from a single exceedance of the maximum allowable turbidity level, where the primacy agency determines after consultation initiated by the water system that a Tier 1 public notice is required. Violations resulting from exceedance of these turbidity limits will routinely require a Tier 2 notice except where the primacy agency determines, after consultation, that a Tier 1 notice is required for the specific situation. The consultation requirement under § 141.203(b)(3) is triggered whenever these specific turbidity violations occur. Consultation must take place as soon as practical but no later than 24 hours after the violation is known. If the water system is unable to consult with the primacy agency within the 24-hour period, the public notice requirement is automatically elevated to a Tier 1. Where the notice requirement is elevated to a Tier 1, the public water system must distribute the notice as soon as practical but no later than the subsequent 24-hour period after the Tier 1 requirement is known (*i.e.*, no later than 48 hours after the

public water system first learns of the violation). This provision is not included in the current rule.

- Occurrence of a waterborne disease outbreak, as defined in Section 141.2, and other waterborne emergencies. This is an expanded Tier 1 notice requirement from that required under the current rule, which is limited to outbreaks related to violations of the Surface Water Treatment Rule for unfiltered systems. Today's final rule adds an explicit reference to § 141.2 to clarify the definition of waterborne disease outbreaks requiring a Tier 1 public notice. The following definition of a waterborne disease outbreak is in § 141.2:

Waterborne disease outbreak means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or state agency.

Today's final rule also adds "other waterborne emergencies" to the list of situations requiring a public notice. The definition of "waterborne emergency" is illustrated in the final rule by example, but EPA's intent is to have the Tier 1 public notice requirement apply to any waterborne emergency (whether a violation or not) with significant potential to pose adverse health effects from short-term exposure. The examples in the final rule to illustrate this include, but are not limited to: Failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.

- Other violations or situations with significant potential to have serious adverse health effects from short-term exposure, as determined by the primacy agency. This enables the primacy agency to elevate to Tier 1 other violations and situations not specifically identified as requiring a Tier 1 notice in Appendix A, when necessary to protect public health. The final rule allows the primacy agency to elevate either violations or situations; the current rule applies only to "violations."

EPA has limited its list of violations and situations routinely requiring a Tier 1 notice to those with a significant potential for serious adverse health effects from short-term exposure. There are other serious violations which may indicate a potential for adverse health effects from short-term exposure in specific circumstances. But EPA did not designate these other violations as

automatically requiring a Tier 1 notice because they represent exceedances of indicator parameters which are not strongly or consistently linked to the occurrence of the possible acute health effects. Most routine Total Coliform Rule (TCR) MCL violations and Surface Water Treatment Rule (SWTR) TT violations would fall into this category. These violations are included in the Tier 2 list. EPA believes focusing the 24-hour notice requirement in its rule on the more limited set of violations will increase the effectiveness of the Tier 1 notices and lead to greater health protection. When a specific violation or situation clearly warrants a Tier 1 notice based on the strength of the evidence, EPA expects the primacy agency to use its discretion to elevate the notice requirement to Tier 1. Use of this discretion is authorized under the final EPA rule to ensure that the public is effectively informed of these violations and situations not explicitly listed by EPA as requiring a Tier 1 notice.

EPA decided to include violations resulting from exceedance of the maximum allowable turbidity limit in its Tier 1 list of violations under Table 1 to § 141.202, but Tier 1 would only apply when the primacy agency directs such a notice after consultation with the public water system. This was because EPA believes that violations resulting from an exceedance of the maximum allowable turbidity limit may be an indicator that there is significant potential of adverse health effects from short-term exposure. There is a strong possibility of serious consequences to public health if the public is not alerted quickly when pathogens have passed through to the drinking water. However, EPA does not believe that all such turbidity excursions should prompt a Tier 1 notice, thus justifying a new requirement that the system consult with the primacy agency within 24 hours to determine whether the specific situation warrants a Tier 1 notice. Requiring immediate consultation with the primacy agency will ensure that Tier 1 notices will be required when supported by the evidence. Requiring consultation rather than an automatic Tier 1 notice also avoids unnecessary and costly notices. When consultation with the primacy agency does not occur within 24 hours, the final rule automatically requires that a Tier 1 notice be distributed.

EPA expects that some of the routine violations related to turbidity exceedances should require a Tier 2 (not a Tier 1) notice because a turbidity exceedance by itself, without other supporting information, has not been shown to date to be a predictable

indicator of a pathogen loading in the finished water. A single exceedance of the maximum allowable turbidity limit, although a violation, may also prove to be a false reading because of a testing equipment malfunction. EPA is continuing research on turbidity as an indicator of pathogen loading as part of the development of the Long Term Enhanced Surface Water Treatment Rule. Given the relatively small number of single exceedance turbidity violations (estimated at less than 200 per year), the additional primacy agency workload for consultation should not be overly burdensome. The final rule provides the best balance between getting a notice out quickly to protect public health and avoiding unnecessary alarm and confusion through issuance of unnecessary notices.

*Comments Requested on Proposal:* EPA requested comment on its proposed list of violations and situations requiring Tier 1 public notification. EPA received a range of comments recommending changes to the proposed list.

First, many commenters specifically focused on those proposed Tier 2 violations which may in some circumstances pose a significant and immediate risk from short-term exposure, specifically violations of the TCR and SWTR/IESWTR. In particular, over half of these commenters recommended that turbidity excursions resulting in a violation be automatically elevated to a Tier 1 notice because they believed that turbidity violations were more often than not a strong indicator of harmful drinking water posing a significant risk from short-term exposure. The rest of those commenting on this issue specifically supported leaving all turbidity violations in Tier 2 (as was proposed) because they believed that turbidity violations were more often than not a false indicator of potential health risk. Virtually all the commenters agreed that turbidity was useful as an indicator to trigger immediate follow-up by the water system.

Second, commenters asked EPA to be more precise in defining which violations or situations required a Tier 1 notice. In particular, commenters asked EPA to better define when EPA intended a Tier 1 notice to be triggered for a waterborne disease outbreak, to clarify when failure to test for fecal coliform required a Tier 1 notice, and to better specify which chlorine dioxide violations required a Tier 1 notice.

Third, several commenters requested that EPA provide more explicit criteria for when EPA intended for the primacy agency to elevate other violations and

situations not explicitly listed in the EPA rule to a Tier 1 notice.

*EPA Response to Comments:* The final rule reflects several substantive changes to what EPA proposed, based on comments received on the proposal. In response to comments recommending that the proposal be changed to require that all TCR MCL violations and all SWTR TT violations require a Tier 1 notice because of their potential risk from short-term exposure, EPA decided to stay with the Tier 2 requirement as proposed. EPA believes that an automatic Tier 1 notice requirement is not justified because routine TCR and SWTR violations (without supporting evidence) are not sufficiently strong or predictable indicators of significant potential of risk from short-term exposure. Routine TCR violations with no evidence of fecal contamination clearly do not provide sufficient evidence indicating significant potential of short-term health risk. Routine violations of the treatment technique requirements under the SWTR and IESWTR do provide an indication of problems with disinfection or filtration treatment, but they are not in themselves sufficient evidence indicating significant potential of short-term health risk.

In response to the range of comments related to the appropriate tier level for turbidity violations, EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule. Accordingly, EPA has added language in the final rule addressing this specific situation. For the reasons outlined earlier in this section, the final rule: Continues to classify all turbidity violations as Tier 2; adds a new requirement that PWSs consult with their primacy agency within 24 hours when exceedances of the maximum allowable turbidity limit occur; enables the primacy agency after the consultation to elevate specific turbidity violations to Tier 1 when warranted; and requires an automatic Tier 1 notice when consultation does not take place within the 24-hour period. Since the significance of the risk to health of an exceedance of the turbidity limit is situational, EPA believes the final rule ensures that Tier 1 notices will go out quickly when necessary (based on the immediate consultation requirement) while avoiding unnecessary notices where the violation poses no risk to health.

In response to comments asking that EPA clarify the violations and situations requiring a Tier 1 notice, EPA agrees and has added language in Table 1 to § 141.202 of the final rule to more precisely define when a Tier 1 notice is

required. In response to specific comments, EPA also added several new Tier 1 categories to Table 1 to ensure that Table 1 accurately and completely lists all the violations and situations where a Tier 1 notice is required. In addition, the final Table 1 list incorporates two existing public notice requirements not explicitly referenced as Tier 1 requirements under the proposal: The notice required under § 141.11(d) for those NCWS allowed by the primacy agency to exceed the nitrate standard; and the notice required under § 141.23(f)(2) when a system fails to take a nitrate confirmation sample after the initial sample showed an exceedance of the MCL. These changes incorporated existing requirements currently found in other sections of the CFR. Finally, changes were made in the final rule language to broaden the definition of waterborne disease outbreak by adding other waterborne emergencies and making minor changes in the language related to failure to test for fecal coliform and chlorine dioxide violations to clarify when the Tier 1 notice is required.

In response to comments asking for more explicit criteria to guide primacy agencies on when to elevate other violations and situations to the Tier 1 list, EPA has decided not to specify additional criteria in the final rule. EPA believes that the primacy agency needs wide latitude to access individual situations based on the regulatory definition of the Tier 1 notice under § 141.201(b). EPA also encourages public water systems to use the Tier 1 notice protocols whenever a violation or situation has significant potential to pose adverse health effects from short-term exposure. Since time is of the essence to protect public health in such situations, public water systems should act quickly to notify persons served, without waiting for direction from the primacy agency. EPA will shortly be issuing the final Public Notification Handbook and the Public Notification Primacy Guidance, which will offer examples of other situations where it believes a Tier 1 notice may be necessary.

## 2. Timing of the Tier 1 Public Notice (and Consultation Requirement)

*Today's Rule:* The final rule under § 141.202(b) requires that a Tier 1 public notice be provided by the public water system as soon as possible but no later than 24 hours after the system learns of the violation. The public water system is also required to initiate consultation with the primacy agency within that same 24-hour period and comply with whatever subsequent public notification

requirements are established during that consultation.

The timing and process established for the Tier 1 public notice in the final rule is significantly different from the current rule.

- First, the public water system is required to distribute the notice within 24 hours (as required under Section 1414(c)(2)(C)(i) of the SDWA), rather than within 72 hours required in the current rule. This is a statutory obligation for such violations under the 1996 SDWA amendments. EPA interprets the statute under Section 1414(c)(2)(C)(i) to require this initial public notice within the first 24 hours to apply regardless of when the consultation with the primacy agency takes place.

- Second, the final rule sets a new requirement that the water system consult with the primacy agency to determine subsequent public notification requirements. EPA interprets the statute under Section 1414(c)(2)(C)(iii) and (C)(iv) to require that the public water system consult with the primacy agency within the first 24 hours after the violation becomes known to the water system, to determine subsequent public notice requirements (*e.g.*, repeat notice frequencies, form and manner of subsequent notice, *etc.*). In contrast, the current rule sets the subsequent public notice requirements in the rule itself, rather than on a case-by-case basis as a result of consultation with the primacy agency.

The final rule identifies a number of elements which may be covered during the consultation, including the timing, form, manner, frequency, and content of subsequent notices, the duration of the notice when posted, and other actions reasonably calculated to ensure the notice is provided to persons served. Additional notices may be necessary to reach other persons served who may not have seen the initial notice and to reaffirm the seriousness of the public health risk from drinking the water. EPA also believes, but does not require in the final rule, that a supplemental notice to announce that the violation has been resolved and the risk from the drinking water has been abated is an effective way to bring closure to the emergency situation. The decision on when to require subsequent notices can best be handled by the primacy agency on a case-by-case basis in consultation with the public water system.

*Comments Requested on Proposal:* EPA requested comment on the new requirement for a 24-hour notice for Tier 1 public notices and the new consultation process within the same

24-hour period proposed in lieu of more prescriptive EPA requirements. EPA also asked for comment on its interpretation of the statute under Section 1414(c)(2)(C), which allows EPA to require public water systems to consult with the primacy agency. EPA received many comments on the new 24-hour notice requirement, ranging from support of the new requirement to a request that the final rule give water systems (or the primacy agency) flexibility to allow more than 24 hours when necessary to produce an effective notice. Some commenters supported maintaining the 72-hour requirement in the current rule, others thought that 24 hours was too long a period. Many other comments were received requesting clarification of when the 24-hour clock would start.

*EPA Response to Comments:* In response to comments received, EPA made minor changes in rule language to what was proposed, primarily to clarify EPA's intention. In response to comments that the 24-hour deadline be increased or decreased, EPA has decided to maintain the proposed period because of the clear statutory language and intent under the 1996 SDWA amendments. As described in the preamble to the proposed rule, in setting the deadline for Tier 1 notification, EPA was limited by the provisions of the Safe Drinking Water Act (1414(c)(2)(C)(i)), which allow a maximum of 24 hours for violations with the potential to cause serious health effects as a result of short-term exposure.

In response to questions about when EPA intended the 24-hour clock to begin, EPA wants to reaffirm the language in the proposal: " \* \* \* as soon as possible but no later than 24 hours after the system learns of the violation." EPA believes it is important to hold the PWS responsible for learning about a violation and the actions it is required to take. Accounting in the rule for every way in which a system could learn of a violation would make the rule overly complicated. EPA wishes to restate that the trigger point for notification is when the system learns that the violation has occurred, not at the point when a system expects that a violation will occur (e.g., when the presence of coliform is discovered and the system is awaiting the results of a confirmation sample). If systems use an independent laboratory, this means that the 24-hour clock starts when the laboratory reports to the public water system the analytical results that indicate a violation has occurred. To get the notice out as soon as practical but no later than 24 hours, EPA encourages

systems to "gear up" in advance for preparing a notice. EPA recommends that public water systems review the public notification requirements for each violation type and develop a fill-in-the-blank Tier 1 notice based on the templates to be issued with the final Public Notification Handbook.

In response to comments on the proposed new consultation requirement under § 141.202(b)(2) and (b)(3), EPA has decided to retain the language as proposed. Some commenters requested that the consultation deadline be changed from 24 hours to the end of the next business day. Even though the public water system is required to distribute the notice to persons served within 24 hours whether or not consultation occurs, EPA believes that any delay in getting the primacy agency involved is unwarranted given the seriousness of the Tier 1 situation. Other commenters asked for clarification of the term "initiate consultation," particularly when the water system is unable to contact the State within the 24-hour period. EPA intends the phrase "initiate consultation" to require, at a minimum, that the system take active steps to contact the primacy agency. EPA and most States now have voice mail or an emergency hotline, so public water systems should always be able to leave a message indicating that an attempt at initiating consultation was made. EPA recognizes that full and complete consultation may not be possible if the primacy agency is unavailable. EPA plans to work with States during the primacy revision process to augment the States' capability to respond on a 24-hour basis to potential Tier 1 notice situations.

Finally, several commenters believed that the proposed requirement under § 141.202(b)(3) to comply with any additional notice requirements resulting from the consultation was too vague and open-ended. In response, EPA intends that the primacy agency have broad-based discretion to respond to the specific situation. Authorizing the primacy agency to respond appropriately to the specific situation will strengthen the public notice response to situations posing significant potential of short-term risk to health.

### 3. Form and Manner of the Delivery of the Tier 1 Notice

*Today's Rule:* The final rule, under § 141.202(c), allows the public water system some flexibility in choosing the specific method of delivery to distribute the notice. This is significantly different from the current rule, which requires that an initial notice be provided in all cases by electronic media and that

subsequent notices be delivered first by newspaper and later on by mail. The final rule does require water systems to use, at a minimum, at least one of the following delivery methods: appropriate broadcast media, posting of the notice in conspicuous locations, hand delivery, or another minimum delivery method specified in writing by the primacy agency. It also establishes an enforceable performance standard, requiring the water system to use delivery methods reasonably calculated to reach all other persons not reached by the minimum method within the 24-hour period, including all residential, transient, and non-transient users of the water.

*Comments Requested on Proposal:* EPA requested comment on the revised requirements defining the form and manner of the Tier 1 notices. Many commenters believed that the proposed list of minimum methods was too limiting, and that other methods should be added to this minimum list to give water systems greater choice. Other commenters requested that the final rule require water systems to use more than one minimum method, since one method in many cases would not reach all persons served. Several commenters felt that the use of a performance standard ("take steps reasonably calculated to reach all persons served"), in lieu of additional listed methods to reach others not covered by the minimum method, gave water systems too much flexibility.

*EPA Response to Comments:* EPA made one substantive change and made other edits to the language in § 141.202(c), in response to the comments received on the proposal. Based on comments received, the final rule added a fourth item to the list of minimum forms of notice delivery, which authorizes the primacy agency to approve in writing the use of a substitute delivery method not already listed in EPA's rule. The proposed rule did not give the primacy agency the discretion to allow use of methods other than those explicitly listed under § 141.202(c). EPA agrees with the commenters that the proposed minimum list of delivery methods (broadcast media, posting, and hand delivery) was too limiting and potentially inappropriate to some Tier 1 situations.

Commenters recommended adding a wide variety of delivery methods to the minimum list, including newspaper, postal patron mailing, e-mail, or priority mail. EPA believes the best response to these comments is to allow primacy agencies to substitute methods other than those listed to fit the specific

situation, because no single list will fit all situations.

Other commenters believed EPA should require that more than one minimum delivery method be used. EPA disagrees. Using one of the listed minimum methods, coupled with the requirement that the system take steps "reasonably calculated to reach all persons served" ensures that additional methods are employed where necessary. Although additional methods are not always required, EPA expects that most community water systems will need to use more than one method of delivery to effectively reach all persons served. In contrast, one method may be adequate for many very small community water systems or non-community systems to reach the persons they serve. In addition, the consultation with the primacy agency required for Tier 1 notices under § 141.202(b) is intended to be a backup where systems are unable or unwilling to comply fully with the requirement.

*G. Form, Manner, and Frequency of the Tier 2 Public Notice: Other Violations With Potential To Have Serious Adverse Effects on Human Health (§ 141.203)*

1. Tier 2 Violations and Situations

*Today's Rule:* The final rule under § 141.203(a) requires a Tier 2 public notice for the following violation categories and other situations:

- All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under 141.202(a) or where the primacy agency determines a Tier 1 notice is required;
- Violations of the monitoring and testing procedure requirements where the primacy agency determines that a Tier 2 public notice is required; and
- Failure to comply with the terms and conditions of any existing variance or exemption in place.

The above list is similar to the list in the comparable section of the current rule, with three exceptions:

- First, the final rule sets the new public notice requirements for the Stage 1 Disinfectant/Disinfection Byproducts (D/DBP) Rule and the Interim Enhanced Surface Water Treatment Rule (63 FR 69389 and 69477, December 16, 1998). (Today's rule also amends the Consumer Confidence Report (CCR) regulations to define the CCR requirements for these new rules. See Section V of the preamble for discussion of the CCR rule changes included in today's rulemaking.)
- Second, the final rule enables the primacy agency, at its option, to elevate the public notice requirement for

specific monitoring or testing procedure violations from a Tier 3 to a Tier 2 notice, taking into account the potential health impacts and the persistence of the violation. Unless the primacy agency determines otherwise, monitoring and testing procedure violations will be reported in a Tier 3 notice.

- Third, although the final rule continues to designate turbidity MCL and TT violations as Tier 2 (as in the current rule and as proposed), the final rule has added a new requirement under § 141.203(b)(3) that a public water system consult with the primacy agency within 24 hours after learning of the violation to determine whether the specific situation should be elevated to a Tier 1 notice.

Table 1 to § 141.202 explicitly authorizes the primacy agency, after consultation, to elevate to Tier 1 those violations related to exceedance of the maximum allowable turbidity level. When consultation does not take place within the 24-hour period, a Tier 1 notice is automatically required. The public water system must distribute the Tier 1 notice by the end of the next 24-hour period (or no later than 48 hours after the system learns of the violation). (See discussion in preamble under Section IV.F.1 related to Tier 1 notices and under Section IV.G.2 related to the turbidity consultation requirements.)

*Comments Requested on Proposal:* EPA requested comment on the list of violations included under Tier 2. Comments were also requested on an alternative option that would require a Tier 2 notice, rather than a Tier 3 notice, for all monitoring and testing procedure violations, unless the primacy agency explicitly allowed a Tier 3 notice. Many comments received on this section related to which of the violations proposed as requiring a Tier 2 notice should be elevated to Tier 1. The response to these comments is included in Section IV.F.1 of the preamble, related to Tier 1 requirements. Other than the Tier 1 issue, most of the comments supported the proposed list of violations as requiring a Tier 2 notice. A few of the commenters did, however, recommend that certain violations proposed as Tier 2 (e.g., Lead and Copper Rule (LCR) treatment technique violations) be moved to Tier 3. Other commenters asked EPA to clarify and possibly add criteria for the situations in which EPA expects primacy agencies to elevate monitoring violations from a Tier 3 notice to a Tier 2 notice.

*EPA's Response to Comments:* EPA made no changes to the language in § 141.203(a) from what was proposed, based on comments received on the

proposal. In response to comments recommending that LCR violations be moved to Tier 3, EPA has decided to leave the rule as proposed. For public health and right-to-know reasons, EPA believes that treatment technique violations deserve the same level of notice as MCL violations. LCR TT violations are an indicator of potential increased levels of lead or copper in drinking water. This is a significant public health issue for a large segment of the population and, for this reason, EPA believes that a Tier 3 notice is not appropriate. In response to comments that EPA specify additional criteria on when primacy agencies should elevate Tier 3 notices to Tier 2, EPA has decided not to add to the performance criteria in the proposal ("\* \* \* taking into account health effects and the persistence of the violation \* \* \*"). EPA intends that the primacy agency exercise broad discretion on when to elevate Tier 3 notices to Tier 2 as part of its approved primacy program. EPA plans to make recommendations on how to decide when to elevate violations to higher tiers in its guidance to primacy agencies on implementing the public notification rule.

2. Timing of the Tier 2 Public Notice

*Today's Rule:* The final rule under § 141.203(b)(1) requires the public water system to provide a Tier 2 public notice to persons served as soon as practical, but no later than 30 days after the system learns of the violation. Posted notices are required by the final rule to remain in place for as long as the violation or situation persists, but in no case for less than seven days, even if the violation or situation is resolved. The final rule under § 141.203(b)(2) also requires the public water system to repeat the notice every three months for as long as the violation persists. In contrast, the current rule requires a newspaper notice within 14 days, a notice mailed to all bill-payers within forty-five days, and a repeat notice mailed every three months thereafter until the violation is resolved.

The final rule gives the primacy agency discretion, in appropriate circumstances, to extend the time period allowed for the Tier 2 notice from 30 days to up to three months for the initial notice and to allow repeat notice less frequently than every three months (but no less than once per year). Permission must be granted in writing. Although the discretion given to the primacy agency is fairly broad, the final rule specifically disallows extensions of the 30-day deadline for the initial public notice for any unresolved violation. It also specifically disallows primacy

agencies from approving repeat notices less frequently than every three months for TCR, SWTR, and IESWTR TT violations. The final rule also does not allow primacy agencies to establish regulations or policies that automatically give "across-the-board" extensions or reductions in the repeat notice frequency for all the other violations.

EPA believes that giving the primacy agency discretion in appropriate circumstances to extend the initial notice beyond 30 days or to allow repeat notices less frequently than every three months is clearly warranted. The violation situations under Tier 2 are very diverse, ranging from violations that on some occasions may pose potential adverse health effects from short-term exposure (such as routine SWTR TT violations), to unresolved violations that pose chronic health effects from long-term exposure (such as benzene violations), and to resolved violations no longer posing any potential risk to health. One size does not fit all! An extension beyond 30 days may be appropriate for violations that were quickly resolved. An extension to three months may allow the water system to include the initial notice in the same mailing as the quarterly bill, with no loss in effectiveness.

As referred to earlier in Section IV.G.1 of the preamble, the final rule also establishes a new provision under § 141.203(b)(3) requiring public water systems to consult with the primacy agency within 24 hours of learning of a violation related to exceedance of the maximum allowable turbidity limit. Violation of the maximum allowable turbidity limit, when combined with other site-specific information, is an indication that pathogens may have passed through to the finished water. EPA is requiring consultation under the public notification rule so the primacy agency can determine whether to elevate the notice requirement to a Tier 1. Where consultation does not take place as required in the 24-hour period, a Tier 1 public notice requirement is automatically triggered and the public water system must distribute the notice within the next 24-hour period. The new consultation requirement overlaps with current SWTR regulations requiring public water systems to inform the primacy agency by the close of the next business day whenever turbidity levels exceed 5 NTU. Today's rule amends the current SWTR rule to eliminate the overlapping requirement. A discussion of this new provision, including why EPA established this new consultation requirement, is contained in Section IV.F.1 of the preamble.

*Comments Requested on Proposal:* EPA requested comment on the proposed 30-day time period required for the initial Tier 2 public notice, the requirement for a repeat notice of ongoing violations every three months, and the discretion given to the primacy agency in specific circumstances to extend the initial notice to three months or the repeat notice frequency to one year (either on a case-by-case basis or by rule). A broad range of comments were received on the proposed 30-day time period for the initial Tier 2 notice, ranging from leaving the current 14-day requirement intact (or even requiring the notice sooner), to support for the 30-day proposed period, or to moving the initial notice to 90 or 120 days after the violation. A significant minority of commenters objected to allowing the primacy agency any discretion to extend the Tier 2 deadlines, believing that such discretion made a more complex rule which could be used inappropriately to give public water systems longer notice periods than intended under the rule. Other commenters supported giving the primacy agency flexibility to extend the Tier 2 deadlines, but asked for clarification or offered alternatives to the proposed extension process.

*EPA Response to Comments:* After considering all the comments, EPA has decided to retain the proposed 30-day period for the initial notice and the 3-month repeat notice frequency in the final rule. But, in response to the large number of commenters requesting reconsideration or clarification of the proposed deadline extension, the final rule redefines how and when primacy agencies would be allowed to extend the initial notice beyond 30 days and under what circumstances the primacy agency would allow less frequent repeat notices for unresolved violations. The proposed rule would have allowed the primacy agency the discretion to deviate from the regulatory time period for "specific circumstances" as defined under the individual approved primacy programs. In § 141.203(b)(1) and (b)(2) of the final rule, EPA replaced the proposed criteria allowing extensions in "specific circumstances" with a list of the specific violation situations where the discretion to extend or allow less frequent repeat notice is prohibited.

In response to comments recommending that the Tier 2 deadline be set at 14 days or less, EPA believes the 30-day deadline will work most effectively because of the need to sharply differentiate the public health circumstances for violations requiring a Tier 2 notice from those requiring a Tier 1 notice. Routine violations in Tier 2 are not usually considered to pose a serious

health risk from short-term exposure, thus immediate notification is not routinely needed to get people out of harm's way. The final rule recommends, however, that the notice be distributed as soon as practical, but sets the outer boundary at no longer than 30 days after the system learns of the violation. A violation that routinely requires a Tier 2 notice but for whatever reason poses elevated risk from short-term exposure may be elevated to Tier 1 at the discretion of the primacy agency.

EPA also disagrees with commenters recommending that the Tier 2 deadline be set at 90 or 120 days after the violation is known. EPA believes that a 30-day baseline period is appropriate and achievable for most Tier 2 violations and situations. A 30-day period is long enough after the violation for the system to gather the information needed to develop an effective notice and soon enough to meet the clear preference of many stakeholders to be informed as soon as practical after the violation. EPA believes setting a 90- or 120-day baseline period for the wide range of violations requiring a Tier 2 notice would threaten the public health and right-to-know objectives underpinning the public notification requirement. EPA does believe that there are situations where it is appropriate to extend the time frame for notification of some of these violations beyond 30 days, but these situations are the exception to the norm. The final rule addresses the exceptions to the 30-day deadline by enabling the primacy agency, at its option, to extend the deadline for the initial notice up to three months in appropriate circumstances.

In response to comments opposing any extension of the initial public notice period beyond 30 days, EPA believes that the violations and situations requiring a Tier 2 notice encompass a wide range of violations. One size does not fit all! Although EPA believes that the 30-day deadline is applicable for most Tier 2 situations, giving the primacy agency the discretion to extend the 30-day deadline gives the needed flexibility to respond to local situations. For example, an extension may be especially appropriate for violations that were quickly resolved and no longer pose a risk to public health, or where an extension may allow the water system to include the notice in the same mailing as a quarterly bill with no loss in effectiveness. At the same time, EPA has limited the primacy agency flexibility to grant extensions by prohibiting extensions for any unresolved violation. The final rule also does not allow primacy agencies to establish "across-

the-board" extensions for all violations through their rules and regulations. EPA will work with the States as they develop their primacy revision packages to reach agreement on how this flexibility will be used in their approved primacy program.

### 3. Form and Manner of the Delivery of the Tier 2 Notice

*Today's Rule:* The final rule under § 141.203(c) requires public water systems issuing Tier 2 notices to use one or more of the minimum methods specifically listed in the rule and to take other steps that are reasonably calculated to reach persons served in the required time period. The final rule significantly changes the requirements for delivery of the Tier 2 notice in the current rule. For example, the current rule (for community water systems) first requires a newspaper notice, followed by a notice either mailed or directly delivered to customers.

In contrast, the final rule requires that community water systems, at a minimum, mail or otherwise directly deliver the notice to each customer receiving a bill and to other service connections to which water is delivered. The requirement to deliver the notice to other service connections where water is delivered adds an obligation not explicit in the current rule. The final rule requires that non-community water systems, at a minimum, post the notice in conspicuous places or mail or directly deliver to each customer and service connection (if known). Beyond this regulatory minimum, all public water systems must take steps reasonably calculated to reach other persons served by the system who would not normally be reached by the minimum regulatory method. Examples where persons served may not be reached by the minimum method include: community water systems that provide drinking water to persons who do not pay a water bill (e.g., students, renters, nursing home residents, prison inmates) and therefore would not routinely see a mailed notice; and non-community water systems with situations where persons who use the drinking water might not see the posted notice (e.g., seasonal residents in a resort). The final rule also gives the primacy agency the option to prescribe a different method of delivery for the water system, based on policies and procedures established as part of its approved primacy program.

*Comments Requested on Proposal:* EPA requested comment on the revised requirements for the method of delivery of the Tier 2 public notice. Comments were also requested on an alternative

option to the proposal on the method of delivery that would give the public water system discretion to select from a list the methods it would use, with no required minimum, to meet the overall performance standard. Many comments were received on the proposed list of minimum methods systems could choose from. Some commenters believed the minimum list should be expanded to allow, for instance, use of the newspaper as the minimum method, as in the current rule. Other commenters requested that the final rule require that water systems use more than one minimum method. Still other commenters recommended that the final rule add a requirement to consult with the primacy agency before selecting a method.

*EPA Response to Comments:* The final rule maintains the obligation that was proposed, requiring water systems to take steps beyond the specified minimum that are reasonably calculated to reach persons served by the system, whether they were bill-paying customers, other service connections where water is delivered, or other persons served. The final rule also includes two new requirements that were not in the proposal: delivery of repeat notices must follow the same requirements as the initial notice; and permission given by the primacy agency to deviate from the method of delivery presented in the final rule must be in writing.

In response to comments that the proposed list of minimum delivery methods be expanded, EPA believes no additions to the proposed minimum list are necessary, as the listed methods provide a good baseline for most systems in meeting the performance standard to reach all persons served. Beyond this regulatory minimum, water systems are obligated to use any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by solely relying on the minimum regulatory method. Any other methods used would serve to enhance this minimum objective.

EPA disagrees that a newspaper notice should be explicitly listed as one of the minimum delivery methods, as it is in the current rule. EPA believes that a newspaper notice is beneficial as a supplemental method to mail or hand delivery, and it may be included in a water system's strategy to use media coverage to reach others not reached by mail or hand delivery. But newspaper notices are not as effective as mail or hand delivery in directly reaching persons served. Newspaper notices are typically placed in the legal notices

section of the newspaper where they are not likely to be read. If newspapers are used as an additional method of delivery, EPA strongly recommends that systems purchase advertising space near the front of the newspaper, rather than placing a legal notice. EPA prefers that community water systems focus on methods that will get the notice in people's hands at their place of residence.

In response to comments requesting that EPA not set a minimum delivery method at all in the final rule, relying instead solely on a narrative performance standard, EPA believes that a list of minimum methods establishes a necessary baseline level of performance that is clear and simple to understand and implement. EPA agrees with these commenters on the importance of flexibility in the public notification process. However, EPA feels that the rule must specify basic minimum requirements in order to allow the rule to be self-implementing and enforceable. Therefore, while the rule provides flexibility it also requires that at least one listed minimum method be used to measure baseline performance, to be supplemented if the minimum method is not likely to reach all persons served. Systems have flexibility in determining what supplemental methods should be used. In addition, primacy agencies may allow, as part of their approved primacy program, other minimum methods not listed as the minimum methods in EPA's rule.

### H. Form, Manner, and Frequency of the Tier 3 Public Notice: All Other Violations and Situations Requiring Public Notice (§ 141.204)

#### 1. Tier 3 Violations and Situations

*Today's Rule:* The final rule under Table 1 to § 141.204(a) requires a Tier 3 public notice for: a monitoring or testing procedure violation, except where a Tier 1 notice is already required for specific violations or where the primacy agency determines that the violation requires a Tier 2 or Tier 1 notice; operation under a variance granted under Section 1415 or exemption granted under Section 1416 of the SDWA; announcing the availability of unregulated contaminant monitoring results, as required under § 141.207; and exceedances of the secondary maximum contaminant level (SMCL) for fluoride, as required under § 141.208. The special public notice required for announcing the availability of the unregulated contaminant monitoring results and the special notice for exceedances of the fluoride SMCL, while not included in the

comparable section of the current rule, are not new requirements and can be found elsewhere in the current Code of Federal Regulations. The final rule simply consolidates all the Tier 3 notice requirements in a single table for ease of reference.

Today's rule also makes two other changes from the current rule. It explicitly enables the primacy agency to require a Tier 2 (rather than a Tier 3) notice for specific monitoring or testing procedure violations, taking into account the potential health impacts and persistence of the violation. It also explicitly excludes from Tier 3 the monitoring and testing procedure violations where a Tier 1 notice is already required under the rule. These Tier 1-type monitoring and testing procedure violations are listed in Table 1 to § 141.202 and discussed in Section IV.F.1 of the preamble.

*Comments Requested on Proposal:* EPA requested comment on the list of violations proposed to require a Tier 3 notice. Specifically, comments were requested on an alternative option that would require a Tier 2 (rather than Tier 3) notice for monitoring and testing procedure violations, with the option given to the primacy agency to downgrade such violations to a Tier 3 notice for minor violations. Most of the comments received supported the lead proposal: requiring a Tier 3 notice for monitoring and testing procedure violations, but giving the primacy agency the option to elevate serious violations to a Tier 2. A significant minority of commenters, however, preferred the alternative option, requiring Tier 2 notice for these types of violations, unless the primacy agency lowered the notice requirement for a specific violation to Tier 3. A few commenters requested that the final rule require a Tier 2 notice for certain monitoring and testing procedure violations, rather than giving discretion to the primacy agency to make these decisions.

*EPA Response to Comments:* EPA made several changes in the regulatory language proposed under § 141.204(a), but the changes did not alter in any significant way the list of violations and situations requiring a Tier 3 notice. The final rule deleted the item from the proposed Table 1 to § 141.204(a) which authorized the primacy agency to add other violations and situations to the Tier 3 list, as it was redundant with the same authority already granted under Table 1 to § 141.201(a). The final rule also added to the Tier 3 list the special notice requirements already required under §§ 141.207 and 141.208. Table 1 to § 141.204 of the final rule now offers

a complete list of Tier 3 required notices for ease of reference. The other changes made to the proposed language were similar clarifications to improve the overall presentation.

In response to the comments received on the proposed alternative option to require Tier 2 notices for monitoring violations, EPA disagrees and has decided to retain the lead proposal (*i.e.*, requiring Tier 3 notice for monitoring violations, with discretion given to the primacy agency to elevate to Tier 2). EPA believes that Tier 3 notice is appropriate because most monitoring and testing procedure violations pose no ongoing risk to public health, and annual notice fulfills the public's right-to-know expectations about these violations. While some monitoring and testing procedure violations may have the potential for serious adverse health effects, most do not. EPA believes that elevating the major or more serious monitoring and testing procedure violations from Tier 3 to Tier 2 must be done on a case-by-case basis, based on the primacy agency's assessment of the potential health impacts arising from the lack of monitoring and the persistence of the monitoring violation. It would be impossible to identify in the rule all instances where Tier 2 notice would be more appropriate. As a result, the rule gives primacy agencies the authority to elevate any monitoring violation to Tier 2, based on potential health effects or persistence of the violation.

EPA also disagrees with commenters who recommend that the rule should distinguish major monitoring and testing procedure violations from other monitoring and testing procedure violations. EPA believes this would make the rule unnecessarily complex. Again, primacy agencies have discretion under the rule to elevate monitoring and testing procedure violations to Tier 2 if they see a need to do so.

## 2. Timing of the Tier 3 Public Notice

*Today's Rule:* The final rule under § 141.204(b)(1) requires that public water systems provide a Tier 3 public notice to persons served no later than one year after the system learns of the violation or other situations requiring a Tier 3 public notice. The final rule also requires the public water system to repeat the notice annually for as long as the violation or situation persists. In contrast, the current rule requires an initial notice to be mailed within three months (with possible extension to one year at the State's option for minor monitoring violations) and a repeat notice every three months thereafter until the violation is resolved. EPA

believes that requiring a notice no more frequently than annually for Tier 3-type situations is appropriate, given the great number of violations requiring such a notice (*i.e.*, 108,599 of the 128,459 violations reported to EPA in FY 1998) and the fact that most monitoring and testing procedure violations do not pose a health risk. The final rule allows water systems, at their option, to distribute the Tier 3 public notice as soon as they believe it is appropriate for their specific situation.

*Comments Requested on Proposal:* EPA requested comment on the proposal to require Tier 3 notices no later than 12 months after the violation occurs. A substantial number of commenters expressed concern over the long time period (12 months) allowed to complete the Tier 3 public notice requirements for monitoring and testing procedure violations. Some commenters recommended that the 12-month period be limited to minor monitoring violations only (as in the current rule), with the notice for the major monitoring violations to be required much sooner. A significant minority of commenters believed that 12 months was too long after the violation to be useful to consumers and in some cases (transient non-community water systems) would be quite ineffective since consumers present at the time of the violation will be long gone.

*EPA Response to Comments:* EPA carried forward to the final rule the proposed 12-month requirement for Tier 3 notices, making language changes to § 141.204(b) to conform to the changes made under the comparable section for Tier 2 requirements. In response to comments requesting that the final rule add the phrase "as soon as possible" to the one-year Tier 3 notice deadline, EPA has decided to retain the language as proposed, without adding the phrase. EPA believes that requiring notice "as soon as possible" is appropriate and necessary for the more serious violations in Tiers 1 and 2. But violations and situations requiring a Tier 3 notice by definition do not pose any direct risk to public health. EPA has chosen not to parallel this language for Tier 3, so as not to hinder the effectiveness of other more immediate notices. Systems are of course free to issue the notice in advance of the 12-month deadline where they believe it is appropriate.

In response to comments that a 12-month period is too long after the violation to be useful and this deadline should be limited to minor monitoring violations only, EPA disagrees with such a limitation. The routine violations and situations in Tier 3 are by definition

non-serious violations, and EPA believes that Tier 3 requirements should apply to all the routine monitoring and testing procedure violations. Tier 3 notification is more a right-to-know issue than a public health concern. EPA acknowledges that some monitoring and testing procedure violations have the potential to mask potentially serious situations. Rather than attempt to address every case where this may happen, it is more efficient to provide primacy agencies the authority to elevate monitoring and testing procedure violations to Tier 2 or even Tier 1 if they believe the need exists.

A commenter's point that requiring notice as soon as possible would motivate systems to return to compliance more quickly is well taken. However, EPA believes that the vast majority of systems with monitoring or testing procedure violations return to compliance well in advance of the requirement for the public notice. Elevating the notice requirements for these violations to encourage systems to return to compliance is not relevant. For systems with continuing monitoring violations, using the public notification process as an incentive to comply with the monitoring requirements should be part of the primacy agency's overall compliance strategy. Primacy agencies are free under the final rule to elevate the notice requirements from Tier 3 to Tier 2 to meet this compliance objective.

### 3. Form and Manner of the Delivery of the Tier 3 Notice

*Today's Rule:* The notice distribution requirements for Tier 3 notices are patterned after the Tier 2 requirements under § 141.203. The basic requirement to take steps reasonably calculated to reach both bill-paying customers and the other persons served who do not receive a bill applies for Tier 3 notices as well. The method of delivery requirements in the final rule for the initial Tier 3 notices and any repeat notices are the same as those prescribed for the Tier 2 public notice.

*Comments Requested on Proposal:* EPA requested comment on the revised requirements for the method of delivery of the Tier 3 notices. Commenters generally supported the proposed method of delivery requirements. Several commenters requested clarification of EPA's intent related to reporting multiple monitoring violations in a single notice, since in some cases a water system missing a single sample may generate separate monitoring violations for all regulated contaminants under the single analytical technique. For example, one analytical method is used to monitor for the 21 regulated

VOCs; missing the one sample, therefore, generates 21 monitoring violations.

*EPA Response to Comments:* EPA made minor changes to proposed § 141.204(c), to conform to the changes made in the comparable section of the final rule for the form and manner of the Tier 2 notice. See the discussion of EPA's response to comments in Section IV.G.3 of the preamble. In response to the request that EPA clarify how multiple monitoring violations should be presented in a single Tier 3 notice, EPA strongly supports efforts by systems to use a single Tier 3 notice to communicate multiple violations whenever appropriate. To make EPA's intent clearer, EPA changed the first of the ten elements required in every public notice to explicitly reference the possibility of multiple violations in a single notice. Section 141.205(a)(1) now reads (with the changes in italics): “\* \* \* description of the violation or situation, including the contaminant(s) of concern \* \* \*” EPA will also provide examples and a notice template in the Public Notification Handbook to illustrate how multiple monitoring violations can be presented in a single notice.

### 4. Option To Use an Annual Notice, Including the CCR, To Deliver Tier 3 Notices

*Today's Rule:* The final rule under § 141.204(b)(2) gives the water systems the option of providing an annual notice listing all Tier 3 violations occurring during the previous year, as long as the water system makes certain that the annual notice is distributed no later than one year after the earliest of the included violations. For systems with multiple monitoring violations, the advantages of using an annual notice instead of individual notices for every violation are compelling, both in terms of reduced cost and in terms of effective communication with the consumers. Further, § 141.204(d) allows community water systems, if appropriate, to use the annual Consumer Confidence Report (CCR) as the vehicle for giving initial public notice for violations occurring during the previous twelve months. However, the use of the CCR as a vehicle for the annual public notice has strict limitations: the CCR can only be used if the CCR meets the timing, content, and distribution requirements required under the public notification rule. The specific conditions for use of the CCR as the annual Tier 3 public notice are listed in § 141.204(d) of the final rule.

Since the vast majority of the violations require a Tier 3 public notice,

the burden on public water systems with multiple Tier 3 violations would be dramatically reduced through use of an annual notice and, where possible, the CCR. EPA recommends that public water systems consider how the CCR and public notification requirements can be better coordinated to take advantage of these efficiencies.

*Comments Requested on Proposal:* EPA requested comment on the option to allow public water systems to provide an annual notice of violations in lieu of individual Tier 3 notices and on the use of the CCR to meet the Tier 3 public notification requirements. In general, virtually all commenters supported the option given to public water systems with multiple Tier 3 violations to use an annual public notice. But many commenters had reservations about the proposed option for using the CCR as the vehicle for the annual public notice. Most commenters believed that using the CCR was a good idea in concept, but they identified significant problems in practice if the final rule required that the CCR must first meet the Tier 3 public notification rule requirements. The CCR and public notification rules have different timing, delivery, and content requirements that are difficult to reconcile. A significant minority of commenters disagreed altogether with giving systems the option to use the CCR as the annual public notice because they believed the purposes of the public notice and the CCR are so different.

*EPA Response to Comments:* EPA retained in the final rule the proposed language allowing water systems, at their option, to issue an annual Tier 3 notice of violations occurring during the year (including using the CCR where appropriate). The final rule made minor changes to the proposed language in §§ 141.204(a)(2) and 141.204(d) to better define the limitations on their use and to clarify EPA's intent, but the final rule makes no significant changes to what EPA proposed. EPA agrees with the commenters who supported the use of the CCR but expressed reservations about how such an option would actually work. EPA acknowledges that there are significant limitations to using the CCR as the annual Tier 3 public notice. However, where the timing of violations allows it, EPA does recommend coordinating the CCR and the annual Tier 3 public notice. Coordinating the two related activities would reduce redundancy and would be less costly. An annual Tier 3 public notice as part of the CCR would sharpen the overall message and be more likely to get consumers' attention. EPA will provide in the final Public Notification Handbook suggestions and examples on

how to coordinate the annual Tier 3 notices with the CCR.

In response to comments that EPA should change the public notice requirements to better fit into the format and content of the CCR, EPA believes such changes would undermine the intent of the public notice. EPA is also limited by the specific timing, delivery, and content requirements of the public notification provisions in the SDWA, as amended. Because EPA encourages water systems to use the CCR where possible, EPA investigated ways to extend the deadline for Tier 3 notices to 18 months. EPA concluded such a change could not be made in the rule because the 12-month period is clearly required by statute. This limits the use of the CCR as the initial public notice to only those violations occurring within 12 months of the CCR publication. Practically, this means that for CCRs published on July 1 (as required under the CCR rule), the CCR could only be used as the initial public notice for violations that occurred after July 1 of the previous year.

In response to the commenters who objected to EPA allowing use of the CCR at all for the initial public notice, EPA continues to support initiatives by public water systems to better coordinate the CCR and the public notices because the violation information required for both is complimentary, the objectives are similar, and coordinating the two similar requirements is more efficient and effective.

#### *I. Content of the Public Notice* (§ 141.205)

##### 1. Standard Elements of the Public Notice

*Today's Rule:* The final rule specifies a list of ten elements that must be included in a public notice for water systems with violations of National Primary Drinking Water Regulations (NPDWRs) and for most other situations requiring a public notice. The rule also specifies four elements that must be included in notices for water systems operating under a variance or exemption. The final rule revises and edits the existing list of standard elements required in every public notice and strengthens the criteria and standards defining notice quality.

- Ten elements are required under § 141.205(a) for public notices of violations of NPDWRs, including monitoring and testing procedure violations, or other situations requiring a public notice. The ten required elements include:

1. A description of the violation or situation that occurred, including the name of the contaminant(s) and level(s) (where applicable);
2. When the violation or situation occurred;
3. Any potential adverse health effects;
4. The population at risk;
5. Whether alternative water supplies should be used;
6. What actions consumers should take;
7. What the system is doing to correct the violation or situation;
8. When the water system expects to return to compliance or otherwise resolve the situation;
9. The name, business address, and phone number of the water system owner or operator; and
10. A statement appended to the notice (where applicable) to encourage notice recipients to distribute the notice to other consumers who might not have seen the notice.

This list of elements is significantly changed from the content requirements in the current rule, as discussed later in this section.

- Four elements are required under § 141.205(b) for public notices for water systems operating under a variance or exemption:

1. An explanation for the reasons for the variance or exemption;
2. The date the primacy agency granted the variance or exemption;
3. A brief status report on compliance with the variance or exemption conditions; and
4. A notice of any opportunity for public input into the review of the variance or exemption.

The current rule does not set the required content elements for public notices for variances or exemptions.

- Four performance standards are listed under § 141.205(c)(1) defining the adequacy of the notice. The notice:

1. Must be displayed in a conspicuous way when printed or posted;
2. Must not contain overly technical language or very small print;
3. Must not be formatted in a way that defeats the purpose of the notice; and
4. Must not contain language that nullifies the purpose of the notice.

The performance standards in today's final rule modify slightly the comparable elements in the current rule.

Note that the information required under § 141.205(b) for variances or exemptions is identical to that already required to be included in the CCR. Community water systems operating under a variance or exemption are encouraged to use their CCR to give the Tier 3 public notification, as long as the

timing and delivery requirements required under the final public notification regulation are met. Public water systems that are not required to issue a CCR may, at their option, combine the variance and exemption notice with other violations occurring over the last year into a single annual public notice. Using the CCR or other annual notice is inappropriate for public water systems violating the conditions of a variance or exemption. Such violations require a 30-day Tier 2 notice.

Today's rule broadens the applicability of the content requirements under § 141.205(a) to include not only notices required for violations of the NPDWRs but also for other situations requiring a public notice. The current rule does not specify content requirements for "other situations" requiring a public notice. The list of "other situations" requiring a public notice has been considerably expanded in today's rule. The situations requiring a public notice other than an NPDWR violation or a variance or exemption are listed in part IV of the final Appendix A to Subpart Q. Six "other situations" are listed:

- Tier 1 Notice Requirement Under § 141.202(a) for Waterborne Disease Outbreak;
- Tier 1 Notice Requirement Under § 141.202(a) for Other Waterborne Emergency;
- Tier 1 Notice Requirement Under § 141.202(a) for Other Situations as Determined by Primacy Agency;
- Special Notice Under § 141.207 to Announce the Availability of Unregulated Contaminant Monitoring Data;
- Special Notice Requirement Under § 141.208 for Exceedance of the Fluoride Secondary Maximum Contaminant Level (SMCL); and
- Special Notice Requirement Under § 141.209 for Exceedance of Nitrate MCL for Non-Community Water Systems, When Allowed by Primacy Agency.

Except where the content requirements are otherwise specified in the rule language, EPA intends the content requirements under § 141.205(a) to apply. The only exceptions in the rule are: (1) The special notice for the fluoride SMCL exceedance under § 141.208, where the entire text of the notice consists of standard language specified in § 141.208(c); and (2) the special notice announcing the availability of unregulated contaminant monitoring results under § 141.207, where the standard elements related to a violation do not apply. Applying the same content requirements under § 141.205(a) for both violations and other situations makes sense because

the questions posed by persons served by water systems for both are basically the same. In both cases, the persons served need to understand what is prompting the notice, what health risk the underlying violation or situation poses, what steps should be taken to minimize risk, and what the water system is doing to resolve the violation or situation.

Under § 141.205(a) of today's rule, EPA is making small but significant changes from the list of notice elements currently required under § 141.32. Other than adding the "other situations" to the definition of each element, the changes from the current rule are as follows:

- Element (a)(1), the description of the violation or situation, is modified to include both the name of the contaminant(s) and the contaminant level(s) (where applicable);
- Element (a)(2), when the violation or situation occurred, and element (a)(8), when the system will return to compliance or resolve the situation, are added;
- Element (a)(9), the water system contact information, is expanded to require the name and business address of the contact in addition to the phone number;
- Element (a)(10), standard language encouraging persons receiving the notice to distribute it to other persons served (where applicable), is added.

*Comments Requested on Proposal:* Comments were requested on the list of elements in the proposal and the four performance standards identified for how the notices must be presented. Several commenters expressed concern that the ten elements required in notices for violations of NPDWRs do not fit into every notice situation. They felt that by requiring them in every notice, EPA's proposal may inadvertently hinder the public water system's ability to issue an effective notice. Other commenters raised specific concerns around the individual elements.

*EPA Response to Comments:* EPA made several changes to the proposed language in the final rule, but the changes did not substantively change the notice content requirements under §§ 141.205(a), (b), and (c)(1). In response to comments that the proposed requirement under § 141.205(a) may be too restrictive because it requires all ten elements to be included for every notice regardless of the situation, EPA wants to reaffirm its intent that the ten elements are meant to apply to every notice situation. Each of the ten elements must be addressed in some manner for each notice, regardless of the violation type (including monitoring and testing procedure violations) or situation, the

notice tier, and the method of delivery. But EPA expects public water systems to use this simple baseline requirement to guide development of a complete and effective notice, not to force systems to add information that is inappropriate or not useful in a given situation. To reflect this intent, EPA has made key changes to the rule language to clarify where discretion in their use is allowed. In response to comments, EPA also amended the language to provide better definition and clarity for some of the elements. If used as EPA intends, the content requirements under § 141.205(a), as amended in the final rule, will not hinder the development of effective notices. To enhance EPA's expectations regarding use of the ten elements, EPA has developed public notice templates and sample notices for a variety of violations and situations. These templates and sample notices will be included in the Public Notification Handbook to be issued shortly.

## 2. Multilingual Requirements for Public Notices

*Today's Rule:* The final rule under § 141.205(c)(2) is much more specific than the current rule in defining the multilingual requirements to be met by public water systems. The current rule under § 141.32 (c)(2) sets a general performance standard, requiring simply that the notice shall be multilingual where appropriate. The final rule requires public water systems serving a large proportion of non-English speaking consumers (as determined by the primacy agency) to include in their notices, in the appropriate languages, information on the importance of the notice or a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate languages. The multilingual requirement in the final rule is in two parts:

- § 141.205(c)(2)(i), which sets the same basic multilingual requirements as in the CCR rule; and
- § 141.205(c)(2)(ii), which requires the water system to determine when and how it must meet the multilingual requirement when the primacy agency has not made the determination.

EPA encourages water systems to go beyond the minimum multilingual requirements in this rule, particularly for Tier 1 notice situations, and provide a fully translated copy of the notice on request or offer telephone assistance in the appropriate language. The Public Notification Handbook will contain sample language regarding the importance of the notice in various

languages as well as complete Tier 1 public notice templates in Spanish.

*Comments Requested on Proposal:* Comments were requested on the more specific multilingual requirements for public water systems required under the proposed rule. Most of the commenters requested that the final rule provide more clarity on when the multilingual requirements would apply and how the rule language ("PWS serving a large proportion of non-English speaking consumers") would be interpreted by the primacy agency.

*EPA Response to Comments:* To respond to comments requesting more clarity on how and when the multilingual requirements would apply, EPA added a new paragraph in the final rule (§ 141.205(c)(2)(ii)) amending the proposed section to require water systems to comply with the multilingual requirements where appropriate, even in those cases where the primacy agency does not provide further direction. The proposed rule language required water systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, to meet the multilingual requirements. The final rule maintains the proposed language under § 141.205(c)(2)(i), but it now also includes a second paragraph not in the CCR rule requiring that water systems, in the absence of further primacy agency direction, comply with the multilingual requirements where appropriate. EPA intends the second paragraph (141.205(c)(2)(ii)) to provide a baseline regulatory requirement ensuring that public water systems, in the absence of additional primacy agency direction, would continue the multilingual programs they are required to have in place under the current rule.

In response to comments that the final rule establish criteria to guide the primacy agencies and water systems on who must comply with the multilingual requirements, EPA has decided not to establish such criteria in the final rule. EPA agrees, however, that additional guidance would be useful. EPA will provide examples in the Public Notification Handbook of the range of situations where it believes multilingual notices are appropriate. EPA will work with those States which are already developing multilingual programs under the CCR rule to guide implementation of the similar requirements for the public notification program.

EPA agrees with a number of commenters that compliance with the letter and spirit of the multilingual requirements will be extremely difficult, particularly for situations where many different languages are spoken by large numbers of consumers. EPA also

believes that compliance with the multilingual requirements is very important if notices are to effectively reach all persons served, particularly for Tier 1 situations. Although EPA is unable to provide a translation service, as some commenters recommended, EPA will include in Appendix C of the Public Notification Handbook a translation in several languages of the key phrases EPA believes are critical in a public notice for communicating the importance of the message. It will also work actively with the States, utility associations, and other assistance providers to provide better support to utilities where needed. EPA believes that widespread compliance with the multilingual requirements depends on active and ongoing support from EPA, the States, the Tribes, and utility associations, and other assistance providers.

### 3. Standard Health Effects Language

*Today's Rule:* The final rule under § 141.205(d)(1) retains the requirement that all public notices for MCL and treatment technique violations use mandatory health effects language to explain the health risks posed by the violation. The final rule replaces the standard language in the current rule for each NPDWR with a new Appendix B to Subpart Q, which provides a table of regulated contaminants with the required language. The final health effects language is shorter, simpler, and consistent with the language EPA uses in similar outreach forums and documents. Under the rule published today, the health effects language required for both the final public notification rule and the Consumer Confidence Report rule are identical.

EPA believes it does not make sense to require standard health effects language different from the CCR language unless there is a compelling reason specific to the public notice situation. Although EPA recognizes that the CCR and public notice may be given at different times and may be intended to meet different objectives, EPA believes that the benefit of using identical core health effects language outweighs the value of tailoring the language to the unique objectives of the public notice. EPA expects that public water systems will supplement the mandatory health effects language or otherwise put the language in the context of the overall notice to meet the unique purposes of the specific public notice. Examples of public notices applicable to different situations are included in the final Public Notification Handbook, which will be issued shortly.

*Comments Requested on Proposal:* EPA requested comment on EPA's proposal to use the CCR standard health effects language to meet the public notification requirement. In particular, EPA solicited comment on specific situations or violations where the CCR language is believed to be inappropriate or incomplete. Most commenters supported keeping the CCR and public notice health effects language the same. A significant minority of commenters believed that the public notice language should be separate from the CCR language because of the different purpose of public notification. Several commenters provided alternative language for specific violations that they believe better expressed the health concerns that needed to be communicated in the public notice for the violation. Other commenters requested that EPA vary the required health effects language based on the strength of evidence underlying the standard, particularly for carcinogens, or include in the language information on the quality of the source waters.

*EPA Response to Comments:* With three exceptions, the health effects language in today's final rule is identical with the language that was proposed:

- The first exception is the language in the final rule for violations of the fluoride MCL. Today's rule revises the public notification language proposed in Appendix B to Subpart Q for fluoride. Today's action also amends the CCR rule to include this revised fluoride language. The revised fluoride language for violations of the MCL now includes more specific information on the cosmetic effects of exceedances above 2 mg/l, which is the fluoride secondary maximum contaminant level (SMCL). EPA's response to comments received concerning the fluoride standard language is included in Section IV.J.3 of the preamble.

- The second exception is the language EPA proposed in the public notification rule for new and revised standards under the Stage 1 D/DBP rule. EPA is incorporating the language that was proposed into the final rule with only minor editorial changes to maintain consistent language for contaminants with the same health effects. Today's action also amends the existing CCR rule to insert the exact language that is contained in the final public notification rule.

- The third exception is the language in the final rule for fecal coliform/*E. coli* MCL violations. The language in the current CCR rule and the proposed rule listed infants, young children, and people with severely compromised

immune systems. EPA agrees with several commenters that drinking water with violations of the fecal coliform/*E. coli* standard may pose a special health risk to the elderly as well. Accordingly, the EPA has amended the proposed public notification rule and revised the current CCR rule to add "some of the elderly" to the standard health effects language for fecal coliform/*E. coli*.

The final rule affirms the proposed requirement to use standard health effects language in Appendix B in public notices for violations of the MCL, TT, and MRDL standards. In addition, EPA reaffirmed its intent to keep the standard health effects language identical for the public notification and CCR rules. Today's action publishes identical language in the two rules for all the existing regulated contaminants. EPA will maintain this policy direction when considering the public notification and CCR rule requirements for new and revised standards, unless there is a compelling reason specific to the new rules for the language to be different.

In response to the comments received offering alternative language to the proposal for specific violations, EPA undertook a systematic review of each comment to determine, first, if the proposed public notification language (and the underlying CCR rule language) was erroneous or misleading and, second, if there was a reason unique to the public notification objective for the language to be different from the CCR. EPA started with the presumption that the CCR language and the public notification language should be the same unless there were compelling reasons to be different. Based on this review, EPA has concluded that there were no errors in the standard language in the existing CCR rule justifying a change and no compelling reason for the core health effects language in the final public notification rule to be different than what was already in place in the CCR rule. Therefore, with the two exceptions discussed earlier in this section, the proposed language is carried forward unchanged into the final public notification and amended CCR rules. EPA's detailed response to the commenters offering alternative language is contained in the "Response to Comments" document in EPA's docket for this rule.

In response to several commenters who recommended that the language be greatly simplified for low-literacy audiences, EPA believes such a change is unwarranted. EPA notes that the health effects language developed for the CCR rule, and used in the proposed

public notification rule, was targeted to low-literacy audiences. It is intended to be simplified language, while still communicating essential health information.

EPA does agree with several of the commenters who recommended that EPA periodically review the public notification and health effects language required in both the CCR and the public notification rules. EPA intends to conduct such a review periodically as new and revised regulations are developed and as new health effects materials are developed based on ongoing research and new information.

#### 4. Standard Language for Monitoring and Testing Procedure Violations

*Today's Rule:* The final rule under § 141.205(d)(2) adds a new section requiring that all public notices contain the following standard language for monitoring and testing procedure violations:

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [compliance period], we ["did not monitor or test" or "did not complete all monitoring or testing"] for [contaminant(s)], and therefore cannot be sure of the quality of your drinking water during that time.

The mandatory language is required in all public notices for monitoring and testing procedure violations. EPA recognizes that many monitoring violations are minor, and are quickly resolved and pose little potential risk to health. For most monitoring and testing procedure violations, water systems resume monitoring quickly after a single violation. The standard language will be most effective where the water system supplements the standard language with a clear explanation of the status of the violation, its relative seriousness related to public health risk, and how it was rectified.

*Comments Requested on Proposal:* EPA solicited comment on proposed standard language, particularly the phrase "\* \* \* and we are unable to tell whether your health was at risk during that time." EPA also requested comment on an option to not require any specific language in the public notice for all monitoring violations. Although most commenters supported the new provision requiring standard language to be included in public notices for monitoring violations, several commenters offered edits or alternative language. Other commenters recommended that the standard language be applied selectively or tailored to take account of the wide

range of monitoring violation situations. A significant minority of the commenters disagreed altogether with the need to require any standard language for monitoring violations in EPA's rule.

*EPA Response to Comments:* The final rule retains the proposed new requirement to use standard language in the public notice for monitoring and testing procedure violations. In response to commenters supporting the standard language but offering edits to better meet EPA's objective, the standard language under § 141.205(d)(2) in the final rule has been significantly revised from the language as proposed.

EPA revised the proposed language to speak of the potential health effects of failure to monitor in more general terms, in response to comments that more specific health effects language does not always apply to notices across the wide range of monitoring and testing procedure violations where the language must be used. EPA's intent is to clearly and simply alert consumers that lack of monitoring or failure to meet testing requirements may in some cases disguise a potential risk to health. It is intended to prompt questions from persons served about the significance of a specific monitoring and testing procedure violation. EPA expects water systems to anticipate such questions and to answer them for the specific situation in the full public notice.

In response to comments that EPA delete the requirement to use standard language in favor of a narrative performance standard, EPA considered setting a performance standard rather than requiring mandatory standard language in the final rule. EPA opted to retain standard language in the final rule because the Agency believes that, in the absence of a reported MCL, MRDL, or treatment technique violation, consumers may presume that the drinking water provided by their water system is safe. This may sometimes not be an appropriate presumption. The standard language clearly and simply alerts consumers that lack of monitoring in some cases may disguise a potential risk to health. Although EPA believes that the vast majority of monitoring violations are quickly resolved and do not disguise a potential risk to health, EPA intends the standard language to prompt questions about the significance of the specific monitoring violation. In routine circumstances, these questions should be anticipated and answered in the full public notice. EPA's intent is not to alarm consumers unnecessarily; rather, the information should help inform consumers about the significance

of the monitoring or testing procedure violation.

#### 5. Standard Language To Encourage Customers Receiving the Public Notice To Distribute the Notice to Other Persons Served

*Today's Rule:* The final rule under § 141.205(d)(3) adds a new section requiring that public notices contain standard language, where applicable, encouraging the customers receiving the public notice to distribute the notice to other persons served by the public water system (such as tenants, residents, patients, etc.). The required standard language is as follows:

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

Mailed notices, in particular, are routinely sent to only the bill-paying customers, and therefore may not reach some consumers at risk unless actions are taken to notify them of the violations. EPA believes that this standard language is appropriate as a safety net and is necessary to encourage those receiving the public notice to take steps to alert others of the violations and potential risk from drinking water.

Compliance with this requirement is one of, but not the only, reasonably-calculated steps a public water system must take to reach other persons who may not receive or see the notice. The final rule gives the water system discretion to add the distribution language when it determines such a notice is needed to reach persons served beyond those who receive the initial notice directly from the water system.

*Comments Requested on Proposal:* Comments were solicited on the proposed standard language and any alternative language that would meet EPA's intent. Most commenters supported the proposed requirement to include standard distribution language in public notices. A few commenters believed such standard language was not always appropriate and recommended that the final rule give the water system or primacy agency flexibility in determining when it was applicable. A number of comments offered edits to the proposed text to better communicate the intended message.

*EPA Response to Comments:* The final rule retains the proposed requirement that water systems include in their notices the standard language contained in § 141.205(d)(3) to encourage persons receiving the notice to distribute it to

others who are served by the water system. EPA agreed with commenters, however, that the standard language should be required only where it is applicable and useful to reach those persons served by the system who may not hear about the violations through traditional means. Therefore, the final rule gives the water system discretion to determine when the standard language is applicable. The proposed rule required the standard language to be used for all notices. The final rule also includes minor edits to the proposed standard language in response to suggestions from commenters. EPA believes the revised language is simpler than what was proposed and would apply to more situations and encourage wider distribution. EPA disagrees with several commenters who claimed that such a new requirement is not warranted. On the contrary, EPA believes the standard language will serve as a safety net, encouraging those receiving the public notice to alert others who would otherwise not hear of the potential risk from their drinking water due to the violation.

#### *J. Other Public Notification Requirements*

##### 1. Notice to New Billing Units or New Customers (§ 141.206).

*Today's Rule:* The final rule modifies the current regulatory provision requiring that public notices go to new billing units. The current rule requires that community water systems send a copy of the most recent public notice to all new billing units for ongoing MCL and TT violations or violations of the conditions of existing variances or exemptions. The final rule broadens the requirement to include any ongoing violation or situation that required an initial public notice (including ongoing monitoring and testing procedure violations) and adds a new provision requiring non-community water systems to continuously post the notice to inform new customers of any ongoing violations. EPA is revising the current rule to better ensure that new customers served by all public water systems are made aware of any continuing violations of drinking water standards. The initial notice, if posted in a location where new consumers pass by, will meet this new requirement. However, water systems that deliver the initial notice to some but not all the existing customers (or that otherwise have the notice out of sight of new consumers) have an additional responsibility under this new provision. EPA believes this new provision makes notices more readily available to new consumers not

receiving the notice under the current regulation.

*Comments Requested on Proposal:* EPA requested comment on the change to the current rule extending the requirement to cover ongoing monitoring and testing procedure violations and to require that the notice be provided to new customers by both community and non-community water systems. Commenters raised a number of concerns with the proposed language. Several commenters believed that compliance with the new requirement would be difficult to track. Other commenters felt that the notice to new billing units of ongoing monitoring violations was unnecessary and that the more effective vehicle to communicate these violations, for community water systems at least, would be the CCR.

*EPA Response to Comments:* EPA is retaining the requirement for notice to new billing units as proposed. The final rule makes minor, clarifying changes from the proposal, but the basic changes to the current requirements in the proposal have been retained in the final rule. In response to comments that the new requirement extending the current requirement to include notice to new billing units for ongoing monitoring violations was inappropriate and difficult to track, EPA has decided to leave the proposed requirement unchanged. EPA believes that notification to new customers of all ongoing violations meets a clear right-to-know objective. It is part of the operator's obligation to reach the persons they serve, regardless of when they move into the distribution area. In response to State commenters anticipating significant difficulty in tracking compliance, EPA expects that when a system submits the certification of compliance to the primacy agency under § 141.31(d) after each violation event, it would also commit the PWS to sending the notice to new billing units until the violation is resolved. EPA does not intend for systems to forward to primacy agencies a copy of every public notice sent to new customers. EPA will include in the Public Notification Handbook a discussion of how the certification process will work.

##### 2. Special Notice To Announce the Availability of the Results of Unregulated Contaminant Monitoring (§ 141.207)

*Today's Rule:* The final rule creates a new § 141.207 to add the timing and other public notification details to the notice requirement under the recently published Unregulated Contaminant Monitoring Rule (UCMR). The UCMR carried over an existing provision in

§ 141.35, which required that the water systems give notice to the public of the availability of unregulated contaminant monitoring results. The UCMR retains the same reporting requirement as in the former § 141.35 but eliminates the 3-month deadline for giving the public notice, referencing instead the timing and other requirements contained under § 141.207 of today's rule. Today's rule sets a 12-month deadline for this special notice, to allow public water systems, at their option, to report the availability of all the results in a single annual notice, reducing the number of required notices from four to one. EPA encourages community water systems to include the annual notice required under this section in their CCR, as long as the CCR meets the public notification timing and delivery requirements. The unregulated contaminant monitoring results (where detected) must already be included in the CCR, so meeting both requirements in the CCR will be both more efficient for the regulated community and less confusing to the public.

*Comments Requested on Proposal:* EPA requested comment on the proposed approach to meeting the requirements under Sections 1414(c)(2)(E) and 1445(a)(2)(E) of the 1996 SDWA. EPA also requested comment on its proposal to shift the timing of the notice from three months to twelve months. Most commenters supported the timing change. Several commenters recommended that EPA delete the requirement for this special notice requirement altogether from the public notification rule, as it is already adequately covered by the CCR (for community water systems at least).

*EPA Response to Comments:* The final rule retains the requirement, as proposed, to provide notice of the availability of unregulated contaminant monitoring results within twelve months of the monitoring. In response to several commenters who recommended that the notice requirements be provided within three months (as required in the former § 141.35), EPA has decided to retain the proposed 12-month notice deadline. EPA sees this distribution of information as a right-to-know issue, with a different public notification message than the higher-tier notices because it is not related to a violation of an existing standard. The change in the timing of the public notice is to allow water systems, at their option, to report the availability of all the results just once during the year. Nothing precludes a water system from distributing notice of the availability of results of monitoring for unregulated contaminants sooner.

In response to comments that the special notice announcing the availability of unregulated contaminant monitoring results is overlapping and redundant with a similar requirement in the CCR rule, EPA is responding to a statutory requirement under Section 1414(c)(1) and (c)(2)(E) of the 1996 SDWA amendments and is carrying over an existing requirement. EPA does agree, however, that community water systems should be allowed and encouraged to include the notice of the availability of the results in the CCR, if the timing and delivery requirements are met. EPA believes close coordination between the public notification requirement and the CCR reporting requirement for this information will be both more efficient for the regulated community and less confusing to the public.

### 3. Special Notice for Exceedance of the Fluoride Secondary Maximum Contaminant Level (SMCL) (§ 141.208)

*Today's Rule:* Today's action moves the current special fluoride notice requirements under § 143.5 into the new Subpart Q public notification provision at § 141.208. The special public notice is to alert persons served who may not otherwise be notified that the fluoride levels in the drinking water may pose a cosmetic dental risk to children under nine years old. The final rule retains the current requirement that community water systems provide a special notice to persons served when they exceed the SMCL of 2 mg/l for fluoride but do not exceed the MCL violation level of 4 mg/l. As in the current rule, a copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the State public health officer. Community water systems must use the mandatory notice language in the rule. The final rule requires that the notice be sent out as soon as practical but no later than 12 months from the day the water system learns of the exceedance. Repeat notices must be sent out at least annually until the exceedance is eliminated. At its option, a primacy agency may require an initial notice sooner than 12 months or a repeat notice more frequently than annually when warranted by the specific situation.

The final rule under § 141.208 of Subpart Q makes four changes to the current public notice requirements for exceedance of the fluoride SMCL:

- To require that the form and manner of the special notice follow the Tier 3 requirements in §§ 141.204(c) and 141.204(d) of the final rule, including that the notice be sent to persons served

by the system (rather than just to the billing units);

- To require that the notice be sent out "as soon as practical but no later than 12 months from the day the water system learns of the exceedance" (rather than "annually");

- To explicitly authorize the primacy agency to require notice sooner and repeat notices more frequently when warranted by the specific situation; and

- To revise the mandatory language to reflect recent studies of the incidence and potential cosmetic effects of dental fluorosis and to make other changes to better communicate the intended message.

Today's rule also requires that the proposed standard health effects language for violations of the fluoride MCL in Appendix B of Subpart Q be revised to include the effects of dental fluorosis on children under nine years of age. This was added in response to comments that the proposed standard language required for a violation of the MCL did not adequately address the risks to children from fluoride levels above the SMCL.

EPA believes it is important to retain and strengthen the existing fluoride SMCL special notice requirement. Consumers have a right to know about the cosmetic effects from dental fluorosis that may occur in children resulting from exposure to drinking water exceeding the fluoride SMCL. The current notice requirement for exceedance of the fluoride SMCL in § 143.5 was put in place when the fluoride national primary drinking water regulation (NPDWR) was published in April 2, 1986 (50 FR 11396). The 1986 fluoride NPDWR replaced the more stringent MCL in place as an interim standard since the original SDWA in 1974. The interim MCL of 2 mg/l became the SMCL when the final primary standard was published on April 2, 1986. Part of the agreement for reducing the stringency of the MCL from 2 mg/l to 4 mg/l was that the public would continue to be notified of the potential for developing dental fluorosis from exposure to their drinking water when the levels exceeded 2 mg/l.

NTNCWS are not currently required to monitor for fluoride under EPA's current regulations, and therefore the EPA SMCL notice requirement does not apply to them. However, EPA recommends that NTNCWS, particularly schools and day-care centers, provide the special SMCL notice to persons they serve when they learn they are providing drinking water with fluoride levels exceeding 2 mg/l.

*Comments Requested on Proposal:* EPA requested comment on whether EPA should retain the special public notice for exceedance of the fluoride SMCL and, if retained, whether retaining the requirement allowing the public notice to be given as soon as practical but no later than 12 months after the exceedance is known is sufficient. EPA also requested comment on whether the revised mandatory language better communicates the purpose of the notice and the cosmetic risks from drinking the water. Several commenters supported continuation of the special notice requirement but believed that EPA should require it to be distributed as a Tier 2 (30-day) notice rather than annually because of the risk of dental fluorosis in children from relatively short-term exposure. Other commenters requested that EPA either delete the requirement outright or somehow merge it with the CCR requirements.

*EPA Response to Comments:* The final rule carries forward the principal elements of the proposed notice requirement for exceedances of the SMCL basically unchanged. In response to comments, however, EPA did make significant changes to the proposed mandatory notice language to improve the effectiveness of the notice. Also, in response to comments, EPA has explicitly authorized the primacy agency to require the initial notice sooner than 12 months and any repeat notices more frequently than annually. EPA also restored in the final rule the language in § 143.5 of the current rule (inadvertently left out of the proposal) requiring that the notice be distributed not only to persons served, but also to new billing units and new customers and to the State health officer.

In addition, EPA agreed with commenters that the proposed standard language required for violations of the fluoride MCL did not adequately cover the cosmetic effects from the violation. Accordingly, EPA has modified in Appendix B of the final rule the standard health effects language for violations of the fluoride MCL, to include more complete information on the effects of dental fluorosis. The existing fluoride language required in the CCR rule was amended as well. This change will ensure that parents of the children most vulnerable to the cosmetic effects of fluoride exceedances (*i.e.*, children nine years old and under) receive information on both the cosmetic and health effects from fluoride MCL violations.

In response to commenters recommending that the mandatory notice for exceedance of the fluoride

SMCL be deleted or somehow combined with the CCR requirements, EPA has decided to retain the current requirement basically unchanged. EPA sees no need to question the decision to require this special fluoride notice made when EPA first published the primary fluoride standard in 1986. EPA continues to believe that consumers have a right to know about the cosmetic effects from dental fluorosis that may occur in children from exposure to drinking water exceeding the fluoride SMCL. EPA encourages community water systems to use the CCR to meet this special notice requirement, where possible, as long as the CCR is able to meet the timing and delivery requirements under the public notification regulation.

In response to comments that the notice be required sooner than 12 months after the exceedance because of the likely effects from exposure as short as three months, EPA has decided to retain the timing of the notice as proposed. EPA did, however, add language in the final rule that explicitly authorizes the primacy agency to require a more frequent notice when warranted by the specific situation. EPA is aware of recent studies that indicate possible risk of dental fluorosis from short-term exposure to fluoride levels above the SMCL, but it has not done a sufficient review of the various studies to consider changing the notice timing from what was proposed. Review of the fluoride standard falls within the required six year review of the existing national primary drinking water standards under Section 1412(b)(9) of the SDWA, which is not due to be completed until August 2002. Since some recent studies do indicate a possible risk of dental fluorosis from short-term exposure in certain circumstances, EPA believes it is prudent for a water system with continuous levels of fluoride above the SMCL to work with the primacy agency to determine when and how often the notice should be given, based on the severity and persistence of the fluoride exceedance in the specific situation.

4. Special Notice for Nitrate Exceedances Above the MCL by Non-Community Water Systems (NCWS), Where Granted Permission by Primacy Agency Under § 141.11(d) (§ 141.209)

*Today's Rule:* The final rule incorporates into Subpart Q the current public notification requirement under § 141.11(d) for non-community water systems (NCWS) that have been granted permission by the primacy agency to continue to exceed the nitrate MCL of 10 mg/l (although they must not exceed

20 mg/l). The current rule under § 141.11(d) sets criteria that primacy agencies must follow in considering whether to allow NCWS to exceed the nitrate MCL without incurring a violation. The criteria under § 141.11(d) require that the water system: (1) Demonstrate that the drinking water will not be available to children under 6 months of age; (2) provide continuous posting of the fact that nitrate levels are above 10 mg/l and identify the potential health effects of exposure; (3) notify local and State health authorities annually of nitrate levels that exceed 10 mg/l; and (4) ensure that no adverse health effects shall result. The public notice provision under § 141.11(d)(2) is revised today to reference § 141.209 of Subpart Q, which requires that NCWS granted permission to exceed the MCL follow the Tier 1 notice requirements (including the deadline, delivery and content) in much the same way as required for violations of the nitrate MCL. EPA believes incorporating the public notice requirement under § 141.11(d) into the more specific Tier 1 standard public notification protocol will allow NCWS to more systematically meet their public notice obligations when allowed to exceed the MCL.

With today's final rule, EPA is incorporating into Subpart Q all the public notification requirements currently in other parts of CFR Part 141, including the requirement in § 141.11(d). See Section IV.L of this preamble for a summary of these changes. This action does not substantively change the existing public notification requirement and therefore requires no prior notice and opportunity to comment.

5. Conditions Under Which the Primacy Agency May Give Notice on Behalf of Public Water System (§ 141.210)

*Today's Rule:* The final rule retains the provision in the current rule specifying under what conditions the primacy agency may give notice on behalf of a public water system. Under this provision, the primacy agency may give a public notice for the public water system if all public notification requirements are met. The responsibility to comply, however, would always remain with the public water system.

*Comments Requested on Proposal:* EPA requested comment on the proposal to retain this provision. Virtually all the comments received on this provision supported the proposal.

*EPA Response to Comments:* The final rule is unchanged from what was proposed.

*K. Reporting to the Primacy Agency and Retention of Records*

1. Public Water System Reporting to the Primacy Agency (§ 141.31(d))

*Today's Rule:* The final rule amends the existing reporting requirement under § 141.31(d) by requiring public water systems to submit a certification to the primacy agency that all public notification requirements have been met. Under the current § 141.31(d), public water systems are required to submit copies of all public notices to the primacy agency within 10 days of completing each public notice. EPA believes that including a simple certification of compliance from the public water system with the copies of the notices will: Encourage voluntary compliance; save primacy agency resources; and allow better targeting of noncompliers. EPA also believes that maintaining the existing 10-day reporting deadline allows the primacy agency to quickly understand how the system met its public notification obligation and to pursue whatever follow-up is necessary to ensure the public is effectively informed of the violation. The opportunity for immediate feedback to the water system and quick resolution will strengthen the public notification program.

*Comments Received on Proposal:* EPA requested comment on the timing and content of the revised reporting requirement, particularly the new certification requirement. A majority of commenters either requested clarification on what EPA intended under the new certification requirement or recommended that EPA delete the new certification requirement from the final rule altogether. Several commenters also objected to the 10-day reporting deadline, some wanting a 30- or 60-day period and others recommending that it be required immediately after the notice is given.

*EPA Response to Comments:* The final rule retains the proposed requirement that public water systems send a certification of compliance, with copies of the public notices, to the primacy agency within 10 days after the public notification requirements are completed for the initial notice and for each repeat notice cycle. EPA made minor changes to the proposed language to respond to requests that EPA clarify what the scope of the new certification requirement is and when the certification must be submitted. In response to comments questioning the need for this new requirement, EPA believes that a simple certification sent with copies of the notice will facilitate compliance monitoring and follow-up by the

primacy agency. It may also encourage voluntary compliance. In response to comments that EPA extend the proposed ten-day deadline to 30 or 60 days, EPA believes it is important for primacy agencies to receive the notices (and assess their adequacy) as soon as possible after the public water system sends the notice to its customers. The primacy agency's quick follow-up to an inadequate public notice response to violations will ensure public health is protected. In response to a commenter's suggestion of a certification "box," EPA agrees that a properly worded box that indicates the system complied with all of the PN requirements would meet the certification requirement. A sample certification statement for PWSs to use will be included in the final Public Notification Handbook.

2. Retention of Records by Public Water Systems (§ 141.33)

*Today's Rule:* The final rule requires that public water systems retain public notification records for three years. Today's action also amends the Consumer Confidence Report (CCR) regulation to change the public water system record retention requirement from five years to three years to be consistent with the public notification requirement. The current public notification regulation has no provision

for retention of public notification records. A record retention requirement for public notices conforms with the requirements already in place for other EPA regulatory requirements (e.g., sampling results, variances and exemptions). The record retention period of no more than three years is consistent with the limits set in the Office of Management and Budget (OMB) regulations at 5 CFR 1320.5, which implement the Paperwork Reduction Act.

*Comments Requested on Proposal:* EPA requested comment on the reporting and record keeping proposal, including an alternative to the proposal to set the retention period for records under the public notification regulations to five years. EPA also requested comment on whether the record retention periods required under the related CCR regulation should be adjusted to three years, if necessary, to be consistent with the final public notification retention requirement and Paperwork Reduction Act regulations. Commenters were split on whether a five- or three-year record retention period should be required, but virtually all the comments supported requiring the same period under the CCR rule and public notification rule.

*EPA Response to Comments:* The final rule setting a three-year record retention

period for public notice records is unchanged from the proposal. In response to comments on the need to keep the required record retention period consistent with the CCR rule, EPA is also amending the CCR rule today to match the three-year period proposed for the public notification rule. EPA decided to require a three-year (rather than a five-year) record retention period to be consistent with the baseline requirement under OMB's paperwork reduction act guidelines. No comments were received that gave compelling reasons to deviate from this baseline OMB requirement.

*L. Other Changes to the Current Code of Federal Regulations (CFR) To Be Consistent With the Final Public Notification Regulations*

Table C is a listing of the changes made in today's rule to various provisions in 40 CFR Part 141 to change the public notification references to the new Subpart Q and to otherwise modify the language to be consistent with the final public notification regulations. The amendments do not substantively alter the existing requirements in these provisions and therefore require no prior notice and opportunity for comment.

TABLE C.—SUMMARY OF OTHER CHANGES TO CFR TO BE CONSISTENT WITH FINAL PUBLIC NOTIFICATION RULE (PART 141, SUBPART Q)

CFR Section	Subject	Subpart Q Reference (where applicable)	Change
§ 141.6(c), § 141.6(g) Effective dates.	"The regulations set forth in . . . § 141.32(b)(3) and § 141.32(d) shall take effect immediately upon promulgation. . . The regulations contained in § 141.32(e)(16), (25–27), and (46) . . . are effective January 1, 1993".	§ 141.201 .....	Delete all reference to § 141.32. Effective dates for new Subpart Q are contained in § 141.201 introductory paragraph.
§ 141.11(d) Nitrate levels in non-community systems.	"At the discretion of the State, nitrate levels not to exceed 20 mg/l may be allowed in a non-community water system if the supplier of water demonstrates. . . that (1) Such water will not be available to children under 6 months of age; and (2) There will be continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure; and local and State public health authorities will be notified annually of nitrate levels. . . and (4) No adverse health effects shall result."	§ 141.209 .....	Change § 141.11(d)(2) to require that systems meet PN requirements under § 141.209. Add new special notice (§ 141.209), require Tier 1 notification and the ten elements required for violations
§ 141.21(g)(1) Total coliform MCL.	"A public water system which has exceeded the MCL for total coliform in § 141.63 must report the violation to the State no later than the end of the next business day after it learns of the violation, and notify the public in accordance with § 141.32".	§ 141.203 (Tier 2) and § 141.204 (Tier 3).	Change reference to "§ 141.32" to "subpart Q"

TABLE C.—SUMMARY OF OTHER CHANGES TO CFR TO BE CONSISTENT WITH FINAL PUBLIC NOTIFICATION RULE (PART 141, SUBPART Q)—Continued

CFR Section	Subject	Subpart Q Reference (where applicable)	Change
§ 141.21(g)(2) Coliform monitoring.	“A public water system which has failed to comply with a coliform monitoring requirement, including the sanitary survey requirement, must report the monitoring violation to the State within ten days after the system discovers the violation, and notify the public in accordance with § 141.32”.	§ 141.204 (Tier 3) or § 141.202 (Tier 1).	Change reference to “§ 141.32” to “subpart Q”
§ 141.22(b) 0Turbidity MCL ..	“If the monthly average of the daily samples exceeds the maximum allowable limit or if the average of 2 samples taken on consecutive days exceeds 5 TU . . . report to the state and notify the public as directed in § 141.31 and § 141.32”.	§ 141.203 (Tier 2) .....	Change reference to “§ 141.32” to “subpart Q”
§ 141.23(f)(2) Confirmation sample for nitrate and nitrate.	“Where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within 24 hours. . . Systems unable to comply with the 24-hour sampling requirement must immediately notify consumers served . . . in accordance with § 141.32 . . .”.	§ 141.202 (Tier 1) .....	Change reference to “§ 141.32” to “§ 141.202 and meet other requirements under Subpart Q of this part”
§ 141.23(l)(4), § 141.24(f)(15)(iii), § 141.24(h)(11)(iii) Public notice to the area affected for inorganics, VOCs, and SOCs.	“If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the State may allow the system to give public notice to only the area served by that portion of the system which is out of compliance”.	Subpart Q .....	Change “consumers” to “persons” Add this requirement to § 141.202 along with that for nitrate MCLs (item 2 of Table 1) Delete these sections since parallel requirement will be included in § 141.201(c)(2)
§ 141.23(n) Inorganics MCL	“When the average of four analyses . . . exceeds the maximum contaminant level, the supplier of water shall notify the State pursuant to § 141.31 and give notice to the public pursuant to § 141.32”.	§ 141.203 (Tier 2) .....	Change “§ 141.32” to “Subpart Q”
§ 141.23(o) Nitrate MCL .....	“. . . When a level exceeding the maximum contaminant level for nitrate is found, a second analysis shall be initiated within 24 hours, and if the mean of the two analyses exceeds the maximum contaminant level, the supplier of water shall report his findings to the State pursuant to § 141.31 and shall notify the public pursuant to § 141.32”.	§ 141.202 (Tier 1) .....	Change “§ 141.32” to “Subpart Q”
§ 141.26(a)(4) Gross alpha or total radium MCL.	“If the average annual maximum contaminant level for gross alpha particle activity or total radium . . . is exceeded, the supplier . . . shall give notice to the State pursuant to § 141.31 and notify the public as required by § 141.32”.	§ 141.203 (Tier 2) .....	Change “§ 141.32” to “Subpart Q”
§ 141.26(b)(5) Man-made radiation MCL.	“If the average annual maximum contaminant level for man-made radioactivity . . . is exceeded, the supplier . . . shall give notice to the State pursuant to § 141.31 and notify the public as required by § 141.32”.	§ 141.203 (Tier 2) .....	Change “§ 141.32” to “Subpart Q”
§ 141.30(d) TTHM MCL .....	“If the average of samples covering any 12 month period exceeds the Maximum Contaminant Level, the supplier of water shall report to the State pursuant to § 141.31 and notify the public pursuant to § 141.32”.	§ 141.203 (Tier 2) .....	Change “§ 141.32” to “Subpart Q”
§ 141.63(b) Total coliform MCL (fecal positive repeat sample).	“For purposes of the public notification requirements in § 141.32, this is a violation that may pose an acute risk to health.”.	§ 141.202 (Tier 1) .....	Change “§ 141.32” to “Subpart Q”

TABLE C.—SUMMARY OF OTHER CHANGES TO CFR TO BE CONSISTENT WITH FINAL PUBLIC NOTIFICATION RULE (PART 141, SUBPART Q)—Continued

CFR Section	Subject	Subpart Q Reference (where applicable)	Change
§ 141.75(a)(5)(ii) SWTR reporting requirements (unfiltered systems).	“If at any time turbidity exceeds 5 NTU, the system must inform the State as soon as possible, but no later than the end of the next business day”.	§ 141.203(b)(3) .....	Change § 141.75(a)(5)(ii) to require consultation with the primacy agency after turbidity exceedance above 5 NTU, as soon as practical but no later than 24 hours in accordance with the public notification requirements under § 141.203(b)(3)
§ 141.75(b)(3)(ii) SWTR reporting requirements (filtered systems).	“If at any time turbidity exceeds 5 NTU, the system must inform the State as soon as possible, but no later than the end of the next business day”.	§ 141.203(b)(3) .....	Change § 141.75(b)(3)(ii) to require consultation with the primacy agency after turbidity exceedance above 5 NTU, as soon as practical but no later than 24 hours in accordance with the public notification requirements under § 141.203(b)(3)
§ 141.133(b)(1) TTHMs and HAA5 MCLs.	“If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to § 141.32 . . .”.	§ 141.203 (Tier 2) .....	Change “§ 141.32” to “Subpart Q”
§ 141.133(b)(2) Bromate MCL.	“If the average of samples covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to § 141.32 . . .”.	§ 141.203 (Tier 2) .....	Change “§ 141.32” to “Subpart Q”
§ 141.133(b)(3) Chlorite MCL	“If the arithmetic average of any three sample set exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to § 141.32 . . .”.	§ 141.203 (Tier 2) .....	Change “§ 141.32” to “Subpart Q”
§ 141.133(c)(1) Chlorine and chloramines MRDL.	“If the average of quarterly averages covering any consecutive four-quarter period exceeds the MRDL, the system is in violation of the MRDL and must notify the public pursuant to § 141.32 . . .”.	§ 141.203 (Tier 2) .....	Change “§ 141.32” to “Subpart Q”
§ 141.133(c)(2)(I) Chlorine dioxide MRDL.	“If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples . . . exceed the MRDL, the system must . . . notify the public pursuant to the procedures for acute health risks in § 141.32(a)(1)(iii)(E). Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL . . . will also be considered an MRDL violation and the system must notify . . . in accordance with the provisions for acute violations under § 141.32(a)(1)(iii)(E)”.	§ 141.202 (Tier 1) .....	Change “§ 141.32(a)(1)(iii)(E)” to “Subpart Q”
§ 141.133(c)(2)(ii) Chlorine dioxide MRDL.	“If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples are below the MRDL, the system . . . will notify the public pursuant to the procedures for non-acute health risks in § 141.32(e)(78). Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system . . . is also an MRDL violation and the system must notify . . . in accordance with the provisions for non-acute violations under § 141.32(e)(78)”.	§ 141.203 (Tier 2) .....	Change “§ 141.32(e)(78)” to “Subpart Q”

TABLE C.—SUMMARY OF OTHER CHANGES TO CFR TO BE CONSISTENT WITH FINAL PUBLIC NOTIFICATION RULE (PART 141, SUBPART Q)—Continued

CFR Section	Subject	Subpart Q Reference (where applicable)	Change
§ 141.175(c)(1) IESWTR reporting requirements (filtered systems using conventional or direct filtration treatment).	“If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must inform the State as soon as possible, but no later than the end of the next business day”.	§ 141.203(b)(3) .....	Change § 141.175(c)(1) to require consultation with the primacy agency after turbidity exceedance above 1 NTU, as soon as practical but no later than 24 hours in accordance with the public notification requirements under § 141.203(b)(3)
§ 141.175(c)(2) IESWTR reporting requirements (filtered systems using other than conventional or direct filtration treatment).	“If at any time the turbidity in representative samples of filtered water exceed the maximum level set by the State under § 142.173(b) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system must inform the State as soon as possible, but no later than the end of the next business day”.	§ 141.203(b)(3) .....	Change § 141.175(c)(2) to require consultation with the primacy agency after turbidity exceedance above the maximum level set by the State, as soon as practical but no later than 24 hours in accordance with the public notification requirements under § 141.203(b)(3)

*M. Special State/Tribal Primacy Requirements and Rationale (40 CFR Part 142, Subpart B)*

*Today's Rule:* The final rule amends §§ 142.10 and 142.16 of the primacy regulations (40 CFR Part 142, Subpart B) to define the requirements that States (including eligible Indian Tribes) must follow to incorporate the revised public notification regulations into their approved primacy program. The final rule also amends § 142.14 to require that the State retain, for three years, the certifications and public notices received from the public water systems and any determinations establishing alternative public notification requirements. Finally, the final rule amends § 142.15 to reaffirm the requirement that the State report violations of the public notification regulations on a quarterly basis to EPA.

Under the primacy regulations, a State is required to adopt, as a condition of primacy, a State rule that is no less stringent than the regulation being proposed today. The requirements States must meet to receive primary enforcement responsibility (“primacy”) are listed in § 142.10 and requirements to revise an approved primacy program are in § 142.12. Under § 142.10(b)(6)(v), each State with primary enforcement responsibility must adopt and implement adequate procedures to require public water systems to give public notice that is no less stringent than the EPA public notification requirements. Special primacy requirements unique to the public notification regulation are in § 142.16(a).

The final rule amends § 142.10(b)(6)(v) to replace the existing citation (§ 141.32) with the new public notification citation (40 CFR Part 141,

Subpart Q). The final rule replaces the existing language in § 142.16(a) with a new section comprised of two elements.

First, § 142.16(a)(1) requires primacy States to submit requests for approval of a revised primacy program adopting the new public notification requirements under 40 CFR Part 141, Subpart Q. At its option, a State may establish alternative public notification requirements with respect to the form and content of the public notice required under Subpart Q of Part 141. 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. States will have two years after the final rule is published in the **Federal Register** to submit a complete and final primacy program revision package to EPA, unless the State requests and EPA approves an extension of up to two additional years.

Second, § 142.16(a)(2) lists the sections of the final public notification regulations (Subpart Q of Part 141) where EPA explicitly authorizes primacy States to augment or otherwise change the EPA requirements to build a more complete and effective State public notification program. In some cases, EPA is counting on the States to augment the EPA regulation by providing authority under their own regulations for making determinations unique to a specific situation that are more appropriate than the regulatory default under the EPA rule (e.g., adding supplemental Tier 1 requirements after consultation with the public water system; elevating a monitoring violation from a Tier 3 to a Tier 2). In other cases, the authority given to the State to

deviate from the EPA rule is intended to build in flexibility to give a “common sense” solution to unique situations where the EPA rule default requirement just does not work. The regulation in some cases enables the State to tailor the EPA baseline requirements to increase program flexibility and in other cases recognizes and expects the State to exercise its option under primacy to be more stringent than the EPA rule. Building in this flexibility allows the program to be responsive to different situations. One size does not fit all. Of course, States are free to establish requirements that are more stringent and broader in scope than the EPA program without including them in the approved primacy program. The advantage of including such more stringent requirements in the approved primacy program is that it enables EPA and the State to jointly implement and enforce the expanded program.

Where the State uses the flexibility built into EPA's rule as part of its approved primacy program, § 142.16(a)(2) requires that a State establish, as part of its revised primacy program, enforceable requirements and procedures. The EPA rule provisions that explicitly authorize primacy States to augment the EPA requirements are as follows:

- *Table 1 to 40 CFR 141.201(a) (Item 3v)*—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. This supports existing State authority under primacy to add notice requirements not explicit in the EPA rule, to tailor its program to respond to its unique public notification policies and situations.

- *40 CFR 141.201(c)(2)*—To permit 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. This authorizes the State to use its discretion to respond to unique situations where strict compliance with EPA's baseline requirements may lead to an ineffective notice or unnecessary costs.

- *Table 1 of 40 CFR 141.202(a) (Items 5, 6, and 8)*—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. This supports existing State authority under primacy to elevate specific violations to Tier 1 where the EPA default Tier requirement does not meet the State's public health objectives. EPA expects States to use this authority when needed to respond to situations where there is significant potential for adverse health effects from short-term exposure. In particular, EPA needs the State to exercise its authority to elevate single exceedance turbidity violations to a Tier 1 when consultation under § 141.203(b)(3) indicates high potential for short-term health risk.

- *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). This supports existing State authority under primacy to add supplemental Tier 1 requirements as a result of the Tier 1 consultation required under § 141.202(b)(2). EPA expects States to use this authority to ensure effective, enforceable follow-up to the initial Tier 1 notice. The EPA rule does not require any specific follow-up action by the water system after the initial Tier 1 notice, deferring totally to the primacy agency to define all supplemental requirements.

- *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. This supports existing State authority under primacy to use its discretion to tailor the public notice delivery to the specific situation or specific approach preferred by the State, as long as it otherwise meets primacy requirements.

- *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. This supports existing State

authority under primacy to elevate the notice requirement for a monitoring violation to Tier 2. The default tier level for all monitoring violations is Tier 3 unless the primacy agency chooses to elevate the requirement to a Tier 2 notice when warranted. EPA expects States to build this additional authority into their approved programs to ensure that notices for monitoring violations posing potential serious adverse health effects are delivered within 30 days.

- *40 CFR 141.203(b)(1)*—To grant public water systems an extension of up to three months for distributing the Tier 2 public notice, in appropriate circumstances other than those specifically prohibited by the rule. This authorizes the State to use its discretion, where appropriate, to extend the Tier 2 notice deadline to give water systems some relief from EPA's default deadline.

- *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 prohibited by the rule), but no less frequently than once per year. This authorizes the State to use its discretion, where appropriate, to allow less frequent repeat notice frequency for violations to give water systems some relief from EPA's default repeat notice requirement.

- *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. This ensures that the State is prepared to respond to the request for consultation from the water system after it learns of a violation of the turbidity single exceedance limit. EPA expects States to establish a process that would lead to a determination within the 24-hour window to avoid a "no action" default to a Tier 1 notice on every turbidity single exceedance violation.

- *40 CFR 141.205(c)(2)*—To determine the specific multilingual requirement for public water systems, including defining "large proportion of non-English-speaking consumers." This supports existing State authority under primacy to augment the EPA rule to clarify who must comply with the EPA requirements and how the requirements will be met. EPA expects States to provide more specific direction to water systems than is provided under the EPA rule, particularly by developing criteria for determining which systems serve a large proportion of non-English speaking consumers.

EPA believes that State adoption and implementation of the revised public notification rule should, where possible, be coordinated with the State implementation of the CCR rule. EPA encourages and will support efforts by the State to merge the adoption and implementation of the two rules because of the close interrelationship between the two programs. Merging implementation of the two programs will make both programs more effective and understandable to the water systems and to the public.

Although the final date for adoption of the revised public notification rule is two years from the date of today's rule, States may adopt the revised public notification requirements earlier. The new requirements will then go into effect when the State's revised regulations adopting the new requirements go into effect. EPA encourages States to take immediate steps to determine how the more streamlined and effective public notice requirements can be integrated into both the ongoing public notice programs and the emerging CCR program. Early adoption of the new rule will enable water systems to take early advantage of the efficiencies and flexibility built into the revised program.

EPA expects to issue interim primacy guidance shortly, which will outline the new requirements and describe how they can most effectively be adopted and implemented by the States. The guidance will include recommended steps States can take, at their option, to combine the new public notification rule with the CCR rule to better coordinate the related primacy and implementation activities.

*Comments Requested on Proposal:* EPA requested comment on the proposed requirements States would have to follow to develop the approved primacy program revision and on other changes to the State record keeping and reporting requirements related to the public notification rule. EPA also requested comment on the proposed interpretation of the primacy standard to be applied for review of State alternative programs. All comments received on the primacy proposal were in support of allowing States the full two years to adopt the revised public notification regulation. Several commenters saw no need to set special primacy requirements for provisions allowing States to be more stringent than EPA's rule, since States already have that authority. Several other commenters asked EPA to establish criteria in the regulation for when EPA expects States to elevate violations to a more stringent violation tier. A

significant minority of commenters asked that EPA set more specific requirements in the final rule on State compliance reporting and tracking.

*EPA Response to Comments:* The final rule retains the requirement, as proposed, that States must revise their approved primacy programs, including addressing the new special primacy requirements under Section 142.16(a)(2), to retain primacy. The proposed list of special primacy conditions was modified in the final rule to conform to changes made in other sections of the rule and to make other edits to improve the presentation. The basic primacy requirements, however, were unchanged from the proposal.

In response to commenters who questioned the need for special primacy conditions where the State chooses to be more stringent, EPA has reaffirmed the requirement that the primacy revision package submitted to EPA for approval must address all the program elements where EPA explicitly allows the State to set different requirements from the EPA rule requirements. The advantage of including all the program elements in the approved primacy program where the State is explicitly allowed to be different is that it enables EPA and the State to jointly implement and enforce the expanded program. EPA recommends that primacy States take advantage of this opportunity to work together to develop an effective State public notification program. Under the final rule, States are of course still free to establish more stringent requirements outside the approved primacy program.

In response to other commenters requesting that the final rule include criteria for when EPA expects States to be more stringent, EPA has chosen not to specify additional criteria on how the States should use the discretion authorized in the EPA rule. The final rule provisions, in most cases, do establish boundaries on the use of the State discretion. Beyond that, EPA believes the State program should work with EPA to address those questions during the primacy revision approval process. EPA is acutely interested in how the flexibility is used and how EPA and the States can jointly implement and enforce this tailored program. EPA wants to work with States individually to fashion a flexible program which meets the State's needs.

In response to comments concerning EPA's specific expectations regarding State compliance reporting and tracking, EPA believes that these questions are most appropriately addressed in the primacy guidance rather than the regulations. The final rule does reaffirm

the requirement that primacy agencies report public notification violations to EPA on a quarterly basis. It also requires public water systems to submit a compliance certification, with copies of the public notices, to the State within ten days after every public notification event. EPA will address compliance and reporting strategies in its guidance to primacy agencies on implementing the PN rule.

#### **V. Changes to Consumer Confidence Report (CCR) Regulation To Be Consistent With the Final Public Notification Regulation**

*Today's Rule:* The Consumer Confidence Report rule is updated today in several aspects, to be better aligned with the final public notification rule being published today. First, the three Appendices to Subpart O, which contain various pieces of information about the contaminants that EPA regulates, are deleted and the information is combined into a new, comprehensive Appendix A to Subpart O. This new single Appendix makes the information more accessible. EPA will republish the entire table in each final rule that changes the information it contains. As a result of this change, a number of references to the three appendices are revised to reflect the new combined Appendix A. EPA will consider at a later date whether and how to further align the CCR and public notification rules by combining the Appendices in the two rules, since much of the information is similar.

Second, the new Appendix A to Subpart O is updated to contain regulatory and health effects information on each of the disinfectants and disinfection byproducts regulated in the Stage 1 D/DBP rule that EPA published in December 1998. The health effects language was proposed in the public notification rule on May 13, 1999. The final language being published today in Appendix A to Subpart O is identical to that which is established through today's public notification regulations under Subpart Q. Although systems will not be required to include information in their CCRs on these contaminants until after the effective date of the new regulations, some systems may choose to do so earlier.

Third, the standard health effects language for fluoride in the current CCR regulations is revised to be identical to the health effects language required for violation of the fluoride MCL in the public notification rule published today. The revised language incorporates language on the cosmetic effects (*i.e.*, dental fluorosis) that may occur at levels

above 2 mg/l (the SMCL). The MCL standard is 4 mg/l. With this change, the health effects language required for all the regulated contaminants in the public notification rule is now identical to the language required in the CCR rule.

Fourth, the § 141.155(h) requirement that systems retain copies of their CCRs for at least five years is amended to require retention for three years. EPA is making this change to slightly reduce the paper storage burden on water suppliers and to make this requirement consistent with other drinking water record retention requirements.

Finally, definitions for Maximum Residual Disinfectant Level (MRDL) and Maximum Residual Disinfectant Level Goal (MRDLG), modeled on the current definitions for MCL and MCLG, are added to the regulatory terms that systems must include in their CCRs under 141.153(c) when reporting on contaminants governed by them. EPA considers these changes to be straightforward and noncontroversial. Since the new requirements to include the definitions for MRDL and MRDLG are consistent with the similar requirements to include other definitions, EPA believes no prior notice and opportunity to comment are required.

The final public notification rule is closely related to the Consumer Confidence Report (CCR) regulation promulgated in August, 1998 [63 FR 44511 (August 19, 1998)], as amended today. The final rule uses identical language from the CCR rule where there is an overlap, defers to the CCR process where the public notification objectives could be effectively accomplished through the CCR, and otherwise uses language consistent with the CCR when appropriate.

- *Health Effects Language* (§ 141.205(d)(1), Appendix B to Subpart Q). Language on potential health effects of violations is required both for the CCR and public notification. The final rule requires identical health effects standard language for the public notice and the CCR rule, as amended today under Appendix A to Subpart O).

- *Use of CCR for Some Public Notices* (§ 141.204(d)). The CCR requires an annual summary of all violations that have occurred in the previous year (§ 141.153(f)). The final public notification rule allows community water systems, at their option, to use the Consumer Confidence Report as the mechanism to notify their customers of any or all Tier 3 violations, as long as those violations occurred within the last 12 months, the content requirements of § 141.205 are complied with, and the delivery requirements under

§ 141.204(c) are met. The final rule also allows public water systems that are not required to distribute a CCR to use an annual report of all their Tier 3 violations or variances or exemptions, in lieu of individual public notices. In all cases, the CCR or other annual report would have to follow the requirements of the public notice rule to be used for this purpose.

- *Notice of the Availability of the Results of Unregulated Contaminant Monitoring (§ 141.207).* The 1996 SDWA amendments for both the CCR and public notification contained provisions related to giving notice of the results of unregulated contaminant monitoring required by EPA. EPA is deferring to the requirement in the CCR rule (under § 141.153(d) and (e)) to meet the public notification statutory provision. The CCR rule requires that such information be included in the annual CCR for community water systems when contaminants are detected. The final public notification rule does, however, contain a special public notice requirement (under § 141.207) to announce the availability of the results of the unregulated contaminant monitoring required under the Unregulated Contaminant Monitoring Rule (UCMR).

- *Certification by PWS That Public Notification Requirements Are Met (§ 141.31(d)).* The final rule adds a new requirement that public water systems provide a certification to the primacy agency, along with a copy of their public notices, that all requirements have been met. This is patterned after (although not identical) to the certification requirement in the CCR regulation (§ 141.155(c)).

- *Use of Multilingual Notices (§ 141.205(c)(2)).* The CCR regulation requires that in communities with a large proportion of non-English speaking residents, as determined by the primacy agency, the report must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language. The final public notification

rule uses the exact language in the CCR rule to set the multilingual requirements. The public notification rule, however, includes a second provision not in the CCR rule that requires PWSs to comply with the multilingual requirements where appropriate, even when the primacy agency opts not to make a determination. (§ 141.153(h)(3)).

*Comments Requested on Proposal:* EPA requested comment on the approach in the proposed rule aligning the public notification requirements with the parallel requirements in the CCR rule for the five areas and for any other areas that would make compliance with the two rules more effective and efficient. Commenters overwhelmingly supported EPA's proposed intention to closely coordinate the CCR and public notification rule language. A number of commenters, however, disagreed or questioned how EPA proposed to do this for certain program elements.

*EPA Response to Comments:* In the final rule published today, EPA continues to support a close regulatory relationship between the CCR and the public notification rules and strongly encourages primacy agencies and water systems to integrate the two requirements in implementation where it makes sense. EPA's response to commenters who questioned how EPA planned to coordinate the CCR and public notification rules is addressed in the individual preamble sections related to each program element.

**VI. Cost of Rule**

EPA has estimated the costs both for public water systems, which must comply with the requirements of the revised public notification rule published today, and the primacy agencies, which must implement the new requirements on behalf of EPA.

For public water systems, the estimated costs of complying with the new regulation are divided into three component activities: notice preparation costs, notice distribution costs, and costs of repeat notices. Only public water systems with a violation or other situation requiring a public notice incur costs under this rule.

- *Notice preparation costs* include those costs that a public water system must incur to comply with the requirements regardless of how many copies of the notice it must deliver. These costs include the labor hour costs associated with becoming familiar with the requirements for the notice, collecting data regarding monitoring results and the violation, consulting with the primacy agency (when necessary), preparing the technical content of the public notification in a format suitable for distribution, identifying the recipients of the notice, and providing instructions about production of the notice.

- *Notice distribution costs* are costs that increase or decrease along with the number of public notices to be delivered. These costs include costs of producing the reports (costs of paper and photocopying or printing), postage costs when the notice is mailed, costs of posting notices in specified locations, and other labor hour costs of producing and delivering the notices.

- *Repeat notice costs* involve the costs of updating the initial notice and delivering a second copy of the notice, if the violation is not corrected within the specified time period.

For primacy agencies, the estimated incremental costs of implementing the new requirements are divided into four components:

- Cost of revising primacy packages to incorporate the new requirements;
- Costs of consulting with public water systems to clarify notice requirements on a case-by-case basis;
- Costs of receiving and reviewing the public water system compliance certification and copies of the notices; and
- Costs of filing and maintaining the public notification records.

Table D provides a summary of the estimated average annual cost and labor hours to public water systems and to the State primacy agencies. The public water system costs are broken out by size of the system. The combined total cost per year to both the PWS and the primacy agencies is \$13,543,277. The combined total burden hours are 748,811.

TABLE D.—AVERAGE ANNUAL COST AND LABOR HOURS FOR PUBLIC WATER SYSTEMS AND PRIMACY AGENCIES

Summary table	Total cost per year* (1)	Total labor hours (2)	Number of systems in violation** (3)	Labor hours per system (2)/(3) (4)	Cost per system (1)/(3) (5)
PWS:					
PWS serving 25–500	\$5,218,727.77	515,656	31,187 .....	16.53 .....	\$167.34
PWS serving 501–3,300.	1,482,639.78	116,007	3,740 .....	31.02 .....	396.43

TABLE D.—AVERAGE ANNUAL COST AND LABOR HOURS FOR PUBLIC WATER SYSTEMS AND PRIMACY AGENCIES—  
Continued

Summary table	Total cost per year* (1)	Total labor hours (2)	Number of systems in violation** (3)	Labor hours per system (2)/(3) (4)	Cost per system (1)/(3) (5)
PWS serving 3,301–10,000.	1,052,496.62	28,799	854	33.72	1,232.43
PWS serving 10,001–100,000.	2,074,925.70	27,379	632	43.32	3,283.11
PWS serving over 100,000.	2,171,777.56	2,550	54	47.23	40,218.10
Totals for PWS .....	12,000,567.43	690,390	36,467 PWS .....	18.93 hours per PWS .....	329.08 per PWS
State Primacy Agencies ...	1,542,709.87	58,420	56 Primacy agencies .....	1,043.22 hours per primacy agency.	27,548.39 per primacy agency
Totals .....	\$13,543,277.30	748,811			

\* Costs include both labor hour costs and operations and maintenance (O&M) costs.

\*\* Source: FY 1998 inventory and violation data from Safe Drinking Water Information System (SDWIS), January, 1999.

The Agency estimates that the average annual cost to all public water systems with one or more violations during the year is \$12,000,567, including the costs for 690,390 labor hours and the costs for copying, postage and other related O&M costs. This is an average annual cost of \$329.08 for each of the 36,467 public water systems required to comply with the public notice requirements because they had one or more violations during the year. As shown in Table D, the average annual per system costs and labor hours vary significantly by size of the water system:

- The dollar costs include both labor hour costs and non-labor costs. The non-labor costs incurred are principally to cover the costs of copying and mailing the notice. Because the cost of distribution varies directly with the number of persons served, the cost per water system for the large and very large water systems is many times higher than the cost per water system for small and very small systems (e.g., \$167.34 per system serving less than 500 people vs. \$40,218.10 per system serving over 100,000 people).

- The labor hours vary by both the type and size of the water system. For example, a non-community water

system may post the notice, a significantly lower labor hour burden than preparing a mailing or hand delivering the notice. System size also makes a significant difference in total labor costs. The labor estimated to prepare and distribute the notice for a very small system is 16.5 hours. For very large systems, the labor hour estimate is 47.2 hours, almost three times the rate estimated for the very small systems.

The Agency estimates the annual primacy agency costs and labor hours to be \$1,542,710 and 58,420 hours. The average annual cost per primacy agency is estimated at \$27,548 per primacy agency (\$1,542,710 divided by 56) and the annual labor hours per primacy agency are estimated at 1,043 hours per primacy agency (58,420 divided by 56). This does not include the costs for EPA direct implementation of the regulatory program in Wyoming, the District of Columbia, and on Indian lands.

The paperwork burden associated with the current public notification requirements, which are being revised by today's action, was included in the baseline drinking water ICR (OMB Control No. 2040-0090, EPA ICR# 270.39). The estimated burden under

ICR#270.39 was 955,191 hours, and the costs were \$21,969,393. This included the estimated cost to public water systems only. ICR#270.39 did not include any incremental costs to the primacy agencies.

To estimate the change in the burden for public water systems under the revised rule, EPA recalculated the burden numbers under ICR#270.39 to provide a common basis for comparison. The ICR burden estimate under ICR#270.39 could not be used as the basis for comparison because it used different external cost and workload assumptions. First, the cost assumptions in ICR#270.39 used lower postage and labor rates than are currently in place. Second, it assumed the violation levels that were in place when ICR#270.39 was developed, which are quite different from the violation levels assumed for the revised ICR. Third, some activities were omitted from ICR#270.39, such as repeat notices.

The combined changes in the average annual burden and costs to primacy agencies and PWSs, based on comparing the estimate under the revised rule to the adjusted estimate under the current rule, are shown in the table below:

CHANGES IN AVERAGE ANNUAL BURDEN AND COST ESTIMATES (FOR PWS AND PRIMACY AGENCY)

[Rounded to nearest 10,000 for burden and nearest \$100,000 for cost]

	Current rule (Recalculated) 1	Revised rule ICR	Decrease	Percent change
Burden .....	955,000 hours .....	748,000 hours .....	206,000 hours .....	21.6
Cost .....	\$22,100,000 .....	\$13,500,000 .....	\$8,600,000 .....	38.8

<sup>1</sup> To make the current rule estimate and revised rule estimate comparable, the current rule estimate was adjusted to be the sum of the costs under the revised rule plus the estimated cost savings that will be realized under the revised rule.

Two programmatic changes associated with the revised rule account for the bulk of the reduction in burden and cost

estimates from the current rule under \$ 141.32:

- The revised rule changes both the timing and method of delivery options for Tier 3 violations—

- The revised rule would require notice within one year after the occurrence of the violation rather than within three months, as required by the current rule. Systems with monitoring and testing procedure violations occurring several times throughout the year are able, under the revised rule, to consolidate their notices into one annual notice. The current rule limits the PWS's ability to combine multiple violations into a single notice to those occurring within the prior three months. For estimating the burden reduction from this change, EPA assumes that, under the current rule, systems with violations send out a statistical average of 1.5 notices per year.
- The revised rule allows community water systems to meet the public notice requirements for Tier 3 through the existing Consumer Confidence Report (CCR). Tier 3 violations are primarily monitoring or testing procedure violations. Systems that would otherwise incur a large labor burden and postage burden for distributing a mail notice and paying for a newspaper notice will be able to insert the text of the notice into the CCR and incur no additional costs. EPA estimates that half of all community water systems serving less than 10,000 and all community water systems serving more than 10,000 will use the CCR for Tier 3 notices.
- The average annual estimated burden reduction associated with the changes to the timing and method of delivery for Tier 3 notices is approximately 186,000 hours (19.5 percent) and the cost reduction is approximately \$6,300,000 (28.7 percent).

- The revised rule changes the required methods of delivery for Tiers 1 and 2 notices. The current rule requires both newspaper and mail delivery for all tiers, although the primacy agency could waive the mail requirement if it determines the violation has been resolved within a given time. Those systems for whom no newspaper outlet is available are allowed to hand deliver or post instead of mailing and using the newspaper. Under the current rule, systems with Tier 1 violations must also issue a notice via television or radio. The revised rule requires only one method of delivery for Tier 2—mail or hand delivery (or posting for non-community systems). The burden reduction for Tier 2 is small, because it eliminates only newspaper notices, which are estimated to take only 1 hour of labor. For Tier 1, however, systems will have the option of issuing the notice via electronic media, hand

delivery, or posting. The burden reduction resulting from the change in the Tier 1 and Tier 2 method of delivery requirements in the revised rule would be approximately 20,000 hours (2.1 percent), and the cost reduction would be \$2,300,000 (10.2 percent).

The estimated total average annual savings resulting from the above revisions to the public notification requirements are approximately 206,000 hours (21.6 percent) and \$8,600,000 (38.8 percent).

In considering the burden and cost reduction for the revised rule relative to the current requirements under § 141.32, it is important to keep in mind that this comparison is based on assuming full compliance with both rules. In fact, as documented in the 1992 GAO report on the public notification program (GAO/RCED-92-135, June 1992), there has been widespread noncompliance with the public notification requirements. EPA expects that by clarifying and streamlining the requirements in the revised regulation, the revised rule will result in a significantly higher level of compliance with the public notification requirements. To the extent that this occurs, there will also be an increase in State and water system resources devoted to public notification, despite the savings estimated here because of the streamlined revised rule. On the other hand, for those systems that have been complying with public notice requirements all along, the revised rule should result in genuine cost and burden savings.

For more information about the costs of the rule and how EPA developed the estimates, see the Supporting Statement for the EPA Information Collection Request (ICR #1898.02) and the Regulatory Flexibility Screening Analysis in the EPA docket for this rule.

## VII. Other Administrative Requirements

### A. Executive Order 12866: Regulatory Review

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of the legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency," after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. secs. 601(3)-(5)). In addition to the above, to establish an alternative small business definition, agencies must consult with Small Business Administration's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** notice for the proposed Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration on the alternative definition for small businesses, and finalized the alternative definition in the final CCR regulation (63 FR 44511, August 19, 1998). As stated in that Final Rule, the alternative definition would be applied to other drinking water regulations as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that all small entities will experience an impact of much less than one percent of their annual revenues or expenditures. The analyses supporting this certification are contained in the "Regulatory Flexibility Screening Analysis" prepared for this final rule. About 64,000 small water systems are impacted by the revised public notification rule: 24,000 small governments, 31,000 small businesses, and 9,000 small non-profit organizations. We compared for each small entity category the ratio of the average annual per system compliance costs to the estimated average annual per system revenue and expenditures. The ratio for small government entities ranged from 0.19 percent for systems serving less than 500 people to 0.02 percent for systems serving between 3,301 to 10,000 people. The ratio for small business entities ranged from 0.01 percent for systems serving less than 500 people to 0.03 percent for systems serving between 3,301 to 10,000 people. The ratio for small non-profit organization entities ranged from 0.06 percent for systems serving less than 500 people to 0.01 percent for systems serving between 3,301 to 10,000 people.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities by providing flexibility to public water systems on the method of delivery of the public notice and by offering all public water systems the opportunity to use an annual report of violations in lieu of individual Tier 3 notices. In addition, all community water systems are encouraged to use the CCR to meet the requirements of the public notice rule wherever appropriate. (Note that to use the CCR, many small systems would have to distribute their CCR more widely to meet the public notification distribution requirements.) In addition, if the primacy agency permits, systems may be allowed to provide notice to only the portion of the distribution system that is affected by the violation. Finally, small community water systems and all non-community water systems may hand deliver or post the notice in lieu of mailing, reducing substantially their overall cost of compliance with this rule.

### C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information

collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C 3501 *et seq.* and has assigned OMB control number 2040-0209.

This information is being collected in order to fulfill the statutory requirements of section 114 of the Safe Drinking Water Act Amendments (SDWA) of 1996 (Public Law 104-182) enacted August 6, 1996. Public notice of violations is an integral part of the public health protection and consumer right-to-know provisions of the 1996 SDWA amendments. The public notification requirement is one of six interrelated provisions now included in the SDWA, related to providing information to the public. Responses are mandatory. None of the information submitted under the revised rule is confidential business information.

The burden to public water systems is based on the cost of the rule discussed under Section VI of the Preamble. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing way to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and to transmit or otherwise disclose the information.

The total average annual burden to both public water systems and primacy agencies is 748,811 hours at an annual cost of \$13,543,277. The cost estimate includes both the labor hour costs and the operations and maintenance (O&M) costs of implementing the rule.

The average annual burden to public water systems to meet the requirements of the revised public notification rule is 690,390 hours at an annual cost of \$12,000,567. The burden estimate is the sum of the costs of three component activities: notice preparation costs; notice distribution costs; and costs of repeat notices. The costs to the public water systems include labor and non-labor costs, such as the costs to copy and mail the public notices where required. Public water systems are required to comply with the public notification rule if they have one or more violations of National Primary Drinking Water Regulations (NPDWR) or

have other situations requiring a public notice. The number of public water systems estimated to have violations on an annual basis is 36,467. The annual average burden per public water system violating one or more drinking water standards is \$329.08 and 18.9 hours.

The average annual burden to primacy agencies of implementing the new public notification regulations is 58,420 hours at an annual cost of \$1,542,710. The burden estimate is the sum of four component activities: cost of revising primacy packages to incorporate the new requirements; costs of consulting with public water systems; costs of receiving and reviewing the compliance certification and notice copies received from the public water system; and the costs of filing and maintaining the public water system notification records. The costs to the primacy agency include labor costs only. Primacy agencies are required to adopt and implement the new public notification regulation as a condition of maintaining primacy. Fifty-six States and Territories currently have primacy under the Safe Drinking Water Act. EPA directly implements the regulatory program in Wyoming, Washington, D.C., and the Indian Lands. The average annual burden for each of the 56 States and Territories with primacy to implement the revised public notification rule is \$27,548 and 1,043 hours per primacy agency. For additional detail, see Section VI of this preamble.

An Agency may not conduct, or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

### D. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government.”

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule published today replaces an existing rule and represents a significant streamlining of requirements from those currently in place. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA consulted extensively with State and local officials in developing this rule. See Section II of this preamble for more detail regarding our work with the State and local government representatives.

#### *E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition,

Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today's final rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it impose substantial direct compliance costs on such communities. The impact on Tribal governments is not unique in that this rule applies equally to all public water systems, including those owned and operated by Federal, State, and local governments. Public water systems on Indian lands incur costs under the public notification rule only if they violate a national primary drinking water regulation or have a variance or exemption from EPA. The public notification requirements will in most cases be met either through hand delivery of a single notice to all persons served or by posting the notice in conspicuous locations. Costs of meeting these requirements will be minimal. In fact, the public notification costs resulting from this rule are less than those required for full compliance with the public notification regulations currently in effect under § 141.32. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

#### *F. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal Mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least

costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The estimated total annual average cost of the final rule is \$13,543,277. (See Section VI of the Supplementary Information.) Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. This rule will establish requirements that affect small community water systems. However, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because the regulation reduces the burden associated with the public notification regulations currently in effect under § 141.32 and requires a minimal expenditure of resources. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

#### *G. Executive Order 12898: Environmental Justice*

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency believes that several of today's requirements will be particularly beneficial to these communities:

- Public water systems would be required to distribute the notice to all persons served, both through the use of required delivery methods and through the use of additional measures reasonably calculated to reach other persons served, if they would not normally be reached by the required method. In addition, the notice to bill-

paying customers must include standard language encouraging those receiving the public notice to make the notice available to other consumers who are not bill-paying customers (e.g., renters, transients, students).

- Public notices would include information on what the consumers should do to minimize the health risk from drinking water in violation of EPA standards and when to seek further medical advice. All notices would be required to include the name, address, and phone number of the water system official who can provide further information.

- Public water systems, where appropriate, must include information on the importance of the notice and other information in languages other than English. Primacy States may, at their option, augment these multilingual requirements. For example, a primacy State could define when a system is serving a population with a large proportion of non-English speaking consumers. Thus, the State could specify which water systems must comply with the augmented State requirements.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The purpose of the public notification rule is to provide a public notice to persons served when a violation of EPA drinking water standards occurs, to enable consumers to avoid health and safety risks from potential exposure to harmful contaminants in the drinking water. The regulation addresses the particular risks that certain contaminants may pose by

considering such risks in assigning contaminants to the appropriate tier and by identifying such risks in the required health effects language, with specific reference to risks to children, where appropriate. The public notice requirements, however, apply to potential health and safety risks to all consumers and all vulnerable populations, and are not targeted specifically to address a disproportionate risk to children.

*I. National Technology Transfer and Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by U.S.C. 804(2). This rule will be effective June 5, 2000.

**List of Subjects**

*40 CFR Part 9*

Reporting and recordkeeping requirements.

*40 CFR Part 141*

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and record-keeping requirements, Water supply.

*40 CFR Part 142*

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and record-keeping requirements, Water supply.

*40 CFR Part 143*

Chemicals, Indians-lands, Water supply.

Dated: April 7, 2000.

**Carol M. Browner,**  
*Administrator.*

For the reasons set out in the preamble, 40 CFR Parts 9, 141, 142, and 143 are amended as follows:

**PART 9—[AMENDED]**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 345a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326 1330, 1324, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 69016992k, 7401–7671q, 7542, 9501–9657, 11023, 11048.

2. In § 9.1 the table is amended by removing the entries "§ 141.31–141.32", "§ 141.33–141.35", "§ 142.10–142.15", and "142.16" and adding in numerical order new entries under the indicated heading to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

40 CFR citation	OMB Control No.
* * * * *	* * * * *
National Primary Drinking Water Regulations	
* * * * *	* * * * *
141.31(a)–(c) .....	2040–0090
141.31(d) .....	2040–0209
141.31(e) .....	2040–0090
141.32(a)–(g) .....	2040–0090
141.33(a)–(d) .....	2040–0090
141.33(e) .....	2040–0209
* * * * *	* * * * *
141.201–141.210 .....	2040–0209

40 CFR citation	OMB Control No.
*	*
<b>National Primary Drinking Water Regulations Implementation</b>	
*	*
142.10–142.13 .....	2040–0090
142.14(a)–(e) .....	2040–0090
142.14(f) .....	2040–0209
142.14(g) .....	2040–0090
142.15(a) .....	2040–0090, 2040–0209
142.15(b)–(d) .....	2040–0090
142.16(a) .....	2040–0209
142.16(b)–(e) .....	2040–0090

\* \* \* \* \*

**PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS**

1. The authority citation for Part 141 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.11 is amended by revising paragraph (d)(2) to read as follows:

**§ 141.11 Maximum contaminant levels for inorganic chemicals**

\* \* \* \* \*

(d) \* \* \*

(2) The non-community water system is meeting the public notification requirements under § 141.209, including continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure; and

\* \* \* \* \*

3. Sections 141.21(g)(1) and (g)(2), 141.22(b), 141.23(n) and (o), 141.26(a)(4), (b)(5), 141.30(d), 141.63(b), 141.133(b)(1)(i), (b)(2), (b)(3) and (c)(1)(i) are amended by revising “§ 141.32” to read “subpart Q” and in § 141.133(c)(2)(i) by revising “§ 141.32(a)(1)(iii)(E) (which appears twice) to “subpart Q” and in § 141.33(c)(2)(ii) by revising “§ 141.133(e)(78)” to read “subpart Q.”

**§§ 141.21, 141.22, 141.23, 141.26, 141.30, 141.63, and 141.133, [Amended]**

4. Section 141.23 is amended by removing paragraph (i)(4) and revising paragraph (f)(2), to read as follows:

**§ 141.23 Inorganic chemical sampling and analytical requirements.**

\* \* \* \* \*

(f) \* \* \*

(2) Where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within

24 hours of the system’s receipt of notification of the analytical results of the first sample. Systems unable to comply with the 24-hour sampling requirement must immediately notify persons served by the public water system in accordance with § 141.202 and meet other Tier 1 public notification requirements under Subpart Q of this part. Systems exercising this option must take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample.

\* \* \* \* \*

**§ 141.24 [ Amended]**

5. Part 141 is amended by removing §§ 141.24(f)(15)(iii) and 141.24(h)(11)(iii).

6. In Part 141, the heading for Subpart D is revised to read as follows:

**Subpart D—Reporting and Record Keeping**

7. Section 141.31 is amended by revising paragraph (d), to read as follows:

**§ 141.31 Reporting requirements.**

\* \* \* \* \*

(d) The public water system, within 10 days of completing the public notification requirements under Subpart Q of this part for the initial public notice and any repeat notices, must submit to the primacy agency a certification that it has fully complied with the public notification regulations. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

\* \* \* \* \*

8. Section 141.32 is amended by revising the introductory paragraph, to read as follows:

**§ 141.32 Public notification.**

The requirements in this section apply until the requirements of Subpart Q of this part are applicable. Public water systems where EPA directly implements the public water system supervision program must comply with the requirements in Subpart Q of this part on October 31, 2000. All other public water systems must comply with the requirements in Subpart Q of this part on May 6, 2002 or on the date the State-adopted rule becomes effective, whichever comes first.

\* \* \* \* \*

9. Section 141.33 is amended by adding paragraph (e), to read as follows:

**§ 141.33 Record maintenance.**

\* \* \* \* \*

(e) Copies of public notices issued pursuant to Subpart Q of this part and certifications made to the primacy agency pursuant to § 141.31 must be kept for three years after issuance.

10. Section 141.75 is amended by revising paragraphs (a)(5)(ii) and (b)(3)(ii) to read as follows:

**§ 141.75 Reporting and record keeping requirements.**

(a) \* \* \*

(5) \* \* \*

(ii) If at any time the turbidity exceeds 5 NTU, the system must consult with the primacy agency as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under § 141.203(b)(3).

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) If at any time the turbidity exceeds 5 NTU, the system must consult with the primacy agency as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under § 141.203(b)(3).

\* \* \* \* \*

11. Section 141.153 is amended by:

- a. Revising (c)(3) introductory text.
- b. Adding paragraphs (c)(3)(iii) and (c)(3)(iv).
- c. Revising paragraphs (d)(1)(i), (d)(4)(ix) and (d)(6).
- d. Revising paragraphs (f)(3) and (f)(4).

The additions and revisions are as follows:

**§ 141.153 Content of the reports.**

\* \* \* \* \*

(c) \* \* \*

(3) A report that contains data on contaminants that EPA regulates using any of the following terms must include the applicable definitions:

\* \* \* \* \*

(iii) *Maximum residual disinfectant level goal or MRDLG:* The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(iv) *Maximum residual disinfectant level or MRDL:* The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(d) \* \* \*

(1) \* \* \*

(i) Contaminants subject to a MCL, action level, maximum residual

disinfectant level, or treatment technique (regulated contaminants).

\* \* \* \* \*

(4) \* \* \*

(ix) The likely source(s) of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in appendix A to this subpart that is most applicable to the system.

\* \* \* \* \*

(6) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques, and the report must contain a clear and readily understandable explanation of the violation including: the length of the violation, the potential adverse health

effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language of appendix A to this subpart.

\* \* \* \* \*

(f) \* \* \*

(3) Lead and copper control requirements prescribed by subpart I of this part. For systems that fail to take one or more actions prescribed by §§ 141.80(d), 141.81, 141.82, 141.83 or 141.84, the report must include the applicable language of appendix A to this subpart for lead, copper, or both.

(4) Treatment techniques for Acrylamide and Epichlorohydrin prescribed by subpart K of this part. For systems that violate the requirements of subpart K of this part, the report must include the relevant language from appendix A to this subpart.

\* \* \* \* \*

12. Section 141.154 is amended by revising paragraph (e) to read as follows:

**§ 141.154 Required additional health information.**

\* \* \* \* \*

(e) Community water systems that detect TTHM above 0.080 mg/l, but below the MCL in § 141.12, as an annual average, monitored and calculated under the provisions of § 141.30, must include health effects language for TTHMs prescribed by appendix A.

13. Section 141.155 is amended by revising paragraph (h) to read as follows:

**§ 141.155 Report delivery and record keeping.**

\* \* \* \* \*

(h) Any system subject to this subpart must retain copies of its Consumer Confidence Report for no less than 3 years.

14. Appendix A to Subpart O is revised to read as follows:

APPENDIX A TO SUBPART O.—REGULATED CONTAMINANTS

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Microbiological contaminants: Total Coliform Bacteria .....	MCL: (systems that collect ≥40 samples/month) 5% of monthly samples are positive; (systems that collect <40 samples/month) 1 positive monthly sample.	.....	MCL: (systems that collect ≥40 samples/month) 5% of monthly samples are positive; (systems that collect <40 samples/month) 1 positive monthly sample.	0 .....	Naturally present in the environment.	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Fecal coliform and E. coli .....	0 .....	.....	0 .....	0 .....	Human and animal fecal waste .....	Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely-compromised immune systems.
Total organic carbon (ppm) .....	TT .....	.....	TT .....	N/A .....	Naturally present in the environment.	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection by products. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Turbidity (NTU) .....	TT .....	.....	TT .....	N/A .....	Soil runoff .....	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.

Radioactive contaminants:						
Beta/photon emitters (mrem/yr)	4 mrem/yr		4	N/A	Decay of natural and man-made deposits.	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Alpha emitters (pCi/l)	15 pCi/l		15	N/A	Erosion of natural deposits	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (pCi/l)	5 pCi/l	—	5	N/A	Erosion of natural deposits	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer
Inorganic contaminants:						
Antimony (ppb)	.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic (ppb)	.05	1000	50	N/A	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (MFL)	7 MFL		7	7	Decay of asbestos cement water mains; Erosion of natural deposits.	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium (ppm)	2		2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium (ppb)	.004	1000	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries.	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions
Cadmium (ppb)	.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Runoff from waste batteries and paints.	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

APPENDIX A TO SUBPART O.—REGULATED CONTAMINANTS—Continued

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Chromium (ppb)	.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits.	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Copper (ppm)	AL=1.3		AL=1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives.	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide (ppb)	.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride (ppm)	4		4	4	Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories.	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Lead (ppb)	AL=.015	1000	AL=15	0	Corrosion of household plumbing systems; Erosion of natural deposits.	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

Mercury [inorganic] (ppb) .....	.002 .....	1000 .....	2 .....	2 .....	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate (ppm) .....	10 .....	.....	10 .....	10 .....	Runoff from fertilizer use; Leaching from septic tanks, sew age; Erosion of natural deposits.	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite (ppm) .....	1 .....	.....	1 .....	1 .....	Runoff from fertilizer use; Leaching from septic tanks, sew age; Erosion of natural deposits.	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium (ppb) .....	.05 .....	1000 .....	50 .....	50 .....	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium (ppb) .....	.002 .....	1000 .....	2 .....	0.5 .....	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories.	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic organic contaminants including pesticides and herbicides: 2,4-D (ppb) .....	.07 .....	1000 .....	70 .....	70 .....	Runoff from herbicide used on row crops.	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP [Silvex](ppb) .....	.05 .....	1000 .....	50 .....	50 .....	Residue of banned herbicide .....	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Acrylamide .....	TT .....	.....	TT .....	0 .....	Added to water during sewage/wastewater treatment.	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

APPENDIX A TO SUBPART O.—REGULATED CONTAMINANTS—Continued

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Alachlor (ppb)	.002	1000	2	0	Runoff from herbicide used on row crops.	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine (ppb)	.003	1000	3	3	Runoff from herbicide used on row crops.	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene (nanograms/l). [PAH]	.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines.	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa.	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	.002	1000	2	0	Residue of banned termiticide	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon (ppb)	.2	1000	200	200	Runoff from herbicide used on rights of way.	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di(2-ethylhexyl) adipate (ppb)	.4	1000	400	400	Discharge from chemical factories	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb)	.006	1000	6	0	Discharge from rubber and chemical factories.	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

Dibromochloropropane (ppt) ....	.0002 .....	1,000,000 .....	200 .....	0 .....	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb) .....	.007 .....	1000 .....	7 .....	7 .....	Runoff from herbicide used on soybeans and vegetables.	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Diquat (ppb) .....	.02 .....	1000 .....	20 .....	20 .....	Runoff from herbicide use .....	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Dioxin [2,3,7,8-TCDD] (ppq) ....	.00000003 .....	1,000,000, 000 ...	30 .....	0 .....	Emissions from waste incineration and other combustion; Discharge from chemical factories.	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Endothall (ppb) .....	.1 .....	1000 .....	100 .....	100 .....	Runoff from herbicide use .....	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb) .....	.002 .....	1000 .....	2 .....	2 .....	Residue of banned insecticide .....	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin .....	TT .....	.....	TT .....	0 .....	Discharge from industrial chemical factories; An impurity of some water treatment chemicals.	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Ethylene dibromide (ppt) .....	.00005 .....	1,000,000 .....	50 .....	0 .....	Discharge from petroleum refineries	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb) .....	.7 .....	1000 .....	700 .....	700 .....	Runoff from herbicide use .....	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor (ppt) .....	.0004 .....	1,000,000 .....	400 .....	0 .....	Residue of banned pesticide .....	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

APPENDIX A TO SUBPART O.—REGULATED CONTAMINANTS—Continued

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Heptachlor epoxide (ppt)	.0002	1,000,000	200	0	Breakdown of heptachlor	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene (ppb)	.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories.	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachlorocyclopentadiene (ppb).	.05	1000	50	50	Discharge from chemical factories	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens.	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl [Vydate] (ppb)	.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes.	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
PCBs [Polychlorinated biphenyls] (ppt).	.0005	1,000,000	500	0	Runoff from landfills; Discharge of waste chemicals.	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachlorophenol (ppb)	.001	1000	1	0	Discharge from wood preserving factories.	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

Picloram (ppb) .....	.5 .....	1000 .....	500 .....	500 .....	Herbicide runoff .....	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb) .....	.004 .....	1000 .....	4 .....	4 .....	Herbicide runoff .....	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb) .....	.003 .....	1000 .....	3 .....	0 .....	Runoff/leaching from insecticide used on cotton and cattle.	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile organic contaminants: Benzene (ppb) .....	.005 .....	1000 .....	5 .....	0 .....	Discharge from factories; Leaching from gas storage tanks and landfills.	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Bromate (ppb) .....	.010 .....	1000 .....	10 .....	0 .....	By-product of drinking water chlorination.	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Carbon tetrachloride (ppb) .....	.005 .....	1000 .....	5 .....	0 .....	Discharge from chemical plants and other industrial activities.	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chloramines (ppm) .....	MRDL = 4 .....	.....	MRDL = 4 .....	MRDLG = 4 ..	Water additive used to control microbes.	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm) .....	MRDL = 4 .....	.....	MRDL = 4 .....	MRDLG = 4 ..	Water additive used to control microbes.	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

APPENDIX A TO SUBPART O.—REGULATED CONTAMINANTS—Continued

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Chlorite (ppm)	1		1	0.8	By-product of drinking water chlorination.	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chloride dioxide (ppb)	MRDL = .8	1000	MRDL = 800	MRDLG = 800.	Water additive used to control microbes.	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
Chlorobenzene (ppb)	.1	1000	100	100	Discharge from chemical and agricultural chemical factories.	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	.6	1000	600	600	Discharge from industrial chemical factories.	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene (ppb)	.075	1000	75	75	Discharge from industrial chemical factories.	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories.	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene (ppb)	.007	1000	7	7	Discharge from industrial chemical factories.	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene (ppb)	.07	1000	70	70	Discharge from industrial chemical factories.	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

trans-1,2-Dichloroethylene (ppb).	.1	1000	100	100	Discharge from industrial chemical factories.	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	.005	1000	5	0	Discharge from pharmaceutical and chemical factories.	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories.	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene (ppb)	.7	1000	700	700	Discharge from petroleum refineries	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Haloacetic Acids (HAA) (ppb)	.060	1000	60	N/A	By-product of drinking water disinfection.	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Styrene (ppb)	.1	1000	100	100	Discharge from rubber and plastic factories; Leaching from landfills.	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene (ppb)	.005	1000	5	0	Discharge from factories and dry cleaners.	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
1,2,4-Trichlorobenzene (ppb)	.07	1000	70	70	Discharge from textile-finishing factories.	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	.2	1000	200	200	Discharge from metal degreasing sites and other factories.	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	.005	1000	5	3	Discharge from industrial chemical factories.	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

APPENDIX A TO SUBPART O.—REGULATED CONTAMINANTS—Continued

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
Trichloroethylene (ppb) .....	.005 .....	1000 .....	5 .....	0 .....	Discharge from metal degreasing sites and other factories.	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
TTHMs [Total trihalomethanes] (ppb).	0.10/.080 .....	1000 .....	100/80 .....	N/A .....	By-product of drinking water chlorination.	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
Toluene (ppm) .....	1 .....	.....	1 .....	1 .....	Discharge from petroleum factories	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
Vinyl Chloride (ppb) .....	.002 .....	1000 .....	2 .....	0 .....	Leaching from PVC piping; Discharge from plastics factories.	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm) .....	10 .....	.....	10 .....	10 .....	Discharge from petroleum factories; Discharge from chemical factories.	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

Key:  
 AL=Action Level  
 MCL=Maximum Contaminant Level  
 MCLG=Maximum Contaminant Level Goal  
 MFL=million fibers per liter  
 MRDL=Maximum Residual Disinfectant Level  
 MRDLG=Maximum Residual Disinfectant Level Goal  
 mrem/year=millirems per year (a measure of radiation absorbed by the body)  
 N/A=Not Applicable  
 NTU=Nephelometric Turbidity Units (a measure of water clarity)  
 pCi/l=picocuries per liter (a measure of radioactivity)  
 ppm=parts per million, or milligrams per liter (mg/l)  
 ppb=parts per billion, or micrograms per liter (µg/l)  
 ppt=parts per trillion, or nanograms per liter  
 ppq=parts per quadrillion, or picograms per liter  
 TT=Treatment Technique

**Appendices B and C to Subpart O**  
**[Removed]**

15. Appendices B and C to Subpart O are removed.

16. Section 141.175 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

**§ 141.175 Reporting and record keeping requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must consult with the primacy agency as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under § 141.203(b)(3).

(2) If at any time the turbidity in representative samples of filtered water exceed the maximum level set by the State under § 142.173(b) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system must consult with the primacy agency as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under § 141.203(b)(3).

17. Part 141 is amended by adding Subpart Q, to read as follows:

**Subpart Q—Public Notification of Drinking Water Violations**

Sec.

- 141.201 General public notification requirements.
- 141.202 *Tier 1 Public Notice*—Form, manner, and frequency of notice.
- 141.203 *Tier 2 Public Notice*—Form, manner, and frequency of notice.
- 141.204 *Tier 3 Public Notice*—Form, manner, and frequency of notice.
- 141.205 Content of the public notice.
- 141.206 Notice to new billing units or new customers.
- 141.207 Special notice of the availability of unregulated contaminant monitoring results.
- 141.208 Special notice for exceedance of the SMCL for fluoride.
- 141.209 Special notice for nitrate exceedances above MCL by non-community water systems (NCWS), where granted permission by the primacy agency under § 141.11(d).
- 141.210 Notice by primacy agency on behalf of the public water system.

**Appendix A to Subpart Q of Part 141**—NPDWR Violations and Situations Requiring Public Notice

**Appendix B to Subpart Q of Part 141**—Standard Health Effects Language for Public Notification

**Appendix C to Subpart Q of Part 141**—List of Acronyms Used in Public Notification Regulation**Subpart Q—Public Notification of Drinking Water Violations****§ 141.201 General public notification requirements.**

Public water systems in States with primacy for the public water system supervision (PWSS) program must comply with the requirements in this subpart no later than May 6, 2002 or on the date the State-adopted rule becomes effective, whichever comes first. Public water systems in jurisdictions where EPA directly implements the PWSS program must comply with the requirements in this subpart on October 31, 2000. Prior to these dates, public water systems must continue to comply with the public notice requirements in § 141.32 of this part. The term “primacy agency” is used in this subpart to refer to either EPA or the State or the Tribe in cases where EPA, the State, or the Tribe exercises primary enforcement responsibility for this subpart.

(a) *Who must give public notice?* Each owner or operator of a public water system (community water systems, non-transient non-community water systems, and transient non-community water systems) must give notice for all violations of national primary drinking water regulations (NPDWR) and for other situations, as listed in Table 1. The term “NPDWR violations” is used in this subpart to include violations of the maximum contaminant level (MCL), maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures in this part 141. Appendix A to this subpart identifies the tier assignment for each specific violation or situation requiring a public notice.

**TABLE 1 TO § 141.201.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A PUBLIC NOTICE**

- (1) NPDWR violations:
- (i) Failure to comply with an applicable maximum contaminant level (MCL) or maximum residual disinfectant level (MRDL).
  - (ii) Failure to comply with a prescribed treatment technique (TT).
  - (iii) Failure to perform water quality monitoring, as required by the drinking water regulations.
  - (iv) Failure to comply with testing procedures as prescribed by a drinking water regulation.
- (2) Variance and exemptions under sections 1415 and 1416 of SDWA:
- (i) Operation under a variance or an exemption.

**TABLE 1 TO § 141.201.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A PUBLIC NOTICE—Continued**

- (ii) Failure to comply with the requirements of any schedule that has been set under a variance or exemption.
- (3) Special public notices:
- (i) Occurrence of a waterborne disease outbreak or other waterborne emergency.
  - (ii) Exceedance of the nitrate MCL by non-community water systems (NCWS), where granted permission by the primacy agency under 141.11(d) of this part.
  - (iii) Exceedance of the secondary maximum contaminant level (SMCL) for fluoride.
  - (iv) Availability of unregulated contaminant monitoring data.
  - (v) Other violations and situations determined by the primacy agency to require a public notice under this subpart, not already listed in Appendix A.

(b) What type of public notice is required for each violation or situation? Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. The public notice requirements for each violation or situation listed in Table 1 of this section are determined by the tier to which it is assigned. Table 2 of this section provides the definition of each tier. Appendix A of this part identifies the tier assignment for each specific violation or situation.

**TABLE 2 TO § 141.201.—DEFINITION OF PUBLIC NOTICE TIERS**

- (1) *Tier 1 public notice*—required for NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.
- (2) *Tier 2 public notice*—required for all other NPDWR violations and situations with potential to have serious adverse effects on human health.
- (3) *Tier 3 public notice*—required for all other NPDWR violations and situations not included in Tier 1 and Tier 2.

(c) Who must be notified?

(1) Each public water system must provide public notice to persons served by the water system, in accordance with this subpart. Public water systems that sell or otherwise provide drinking water to other public water systems (i.e., to consecutive systems) are required to give public notice to the owner or operator of the consecutive system; the consecutive system is responsible for

providing public notice to the persons it serves.

(2) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the primacy agency may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the primacy agency for limiting distribution of the notice must be granted in writing.

(3) A copy of the notice must also be sent to the primacy agency, in accordance with the requirements under § 141.31(d).

**§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.**

(a) Which violations or situations require a Tier 1 public notice? Table 1 of this section lists the violation categories and other situations requiring a Tier 1 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.202.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE

- (1) Violation of the MCL for total coliforms when fecal coliform or *E. coli* are present in the water distribution system (as specified in § 141.63(b)), or when the water system fails to test for fecal coliforms or *E. coli* when any repeat sample tests positive for coliform (as specified in § 141.21(e));
- (2) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in § 141.62, or when the water system fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in § 141.23(f)(2);
- (3) Exceedance of the nitrate MCL by non-community water systems, where permitted to exceed the MCL by the primacy agency under § 141.11(d), as required under § 141.209;
- (4) Violation of the MRDL for chlorine dioxide, as defined in § 141.65(a), when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water system does not take the required samples in the distribution system, as specified in § 141.133(c)(2)(i);
- (5) Violation of the turbidity MCL under § 141.13(b), where the primacy agency determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

TABLE 1 TO § 141.202.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE—Continued

- (6) Violation of the Surface Water Treatment Rule (SWTR) or Interim Enhanced Surface Water Treatment rule (IESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit (as identified in Appendix A), where the primacy agency determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;
- (7) Occurrence of a waterborne disease outbreak, as defined in § 141.2, or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination);
- (8) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the primacy agency either in its regulations or on a case-by-case basis.

(b) *When is the Tier 1 public notice to be provided?* What additional steps are required? Public water systems must:

- (1) Provide a public notice as soon as practical but no later than 24 hours after the system learns of the violation;
- (2) Initiate consultation with the primacy agency as soon as practical, but no later than 24 hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and
- (3) Comply with any additional public notification requirements (including any repeat notices or direction on the duration of the posted notices) that are established as a result of the consultation with the primacy agency. Such requirements may include the timing, form, manner, frequency, and content of repeat notices (if any) and other actions designed to reach all persons served.

(c) What is the form and manner of the public notice? Public water systems must provide the notice within 24 hours in a form and manner reasonably calculated to reach all persons served. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and non-transient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one

or more of the following forms of delivery:

- (1) Appropriate broadcast media (such as radio and television);
- (2) Posting of the notice in conspicuous locations throughout the area served by the water system;
- (3) Hand delivery of the notice to persons served by the water system; or
- (4) Another delivery method approved in writing by the primacy agency.

**§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.**

(a) Which violations or situations require a Tier 2 public notice? Table 1 of this section lists the violation categories and other situations requiring a Tier 2 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.203.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 2 PUBLIC NOTICE

- (1) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under § 141.202(a) or where the primacy agency determines that a Tier 1 notice is required;
- (2) Violations of the monitoring and testing procedure requirements, where the primacy agency determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; and
- (3) Failure to comply with the terms and conditions of any variance or exemption in place.

(b) *When is the Tier 2 public notice to be provided?*

(1) Public water systems must provide the public notice as soon as practical, but no later than 30 days after the system learns of the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than seven days, even if the violation or situation is resolved. The primacy agency may, in appropriate circumstances, allow additional time for the initial notice of up to three months from the date the system learns of the violation. It is not appropriate for the primacy agency to grant an extension to the 30-day deadline for any unresolved violation or to allow across-the-board extensions by rule or policy for other violations or situations requiring a Tier 2 public notice. Extensions granted by the primacy agency must be in writing.

(2) The public water system must repeat the notice every three months as

long as the violation or situation persists, unless the primacy agency determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. It is not appropriate for the primacy agency to allow less frequent repeat notice for an MCL violation under the Total Coliform Rule or a treatment technique violation under the Surface Water Treatment Rule or Interim Enhanced Surface Water Treatment Rule. It is also not appropriate for the primacy agency to allow through its rules or policies across-the-board reductions in the repeat notice frequency for other ongoing violations requiring a Tier 2 repeat notice. Primacy agency determinations allowing repeat notices to be given less frequently than once every three months must be in writing.

(3) For the turbidity violations specified in this paragraph, public water systems must consult with the primacy agency as soon as practical but no later than 24 hours after the public water system learns of the violation, to determine whether a Tier 1 public notice under § 141.202(a) is required to protect public health. When consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notice of the violation within the next 24 hours (*i.e.*, no later than 48 hours after the system learns of the violation), following the requirements under § 141.202(b) and (c). Consultation with the primacy agency is required for:

(i) Violation of the turbidity MCL under § 141.13(b); or  
(ii) Violation of the SWTR or IESWTR treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit.

(c) *What is the form and manner of the Tier 2 public notice?* Public water systems must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(1) Unless directed otherwise by the primacy agency in writing, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) Any other method reasonably calculated to reach other persons

regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of this section. Such persons may include those who do not pay water bills or do not have service connection addresses (*e.g.*, house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: Publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (*e.g.*, apartment building owners or large private employers); posting in public places served by the system or on the Internet; or delivery to community organizations.

(2) Unless directed otherwise by the primacy agency in writing, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in paragraph (c)(2)(i) of this section. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: Publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (*e.g.*, community centers).

**§ 141.204 Tier 3 Public Notice—Form, manner, and frequency of notice.**

(a) Which violations or situations require a Tier 3 public notice? Table 1 of this section lists the violation categories and other situations requiring a Tier 3 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

**TABLE 1 TO § 141.204.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 3 PUBLIC NOTICE**

(1) Monitoring violations under 40 CFR part 141, except where a Tier 1 notice is required under § 141.202(a) or where the primacy agency determines that a Tier 2 notice is required;

**TABLE 1 TO § 141.204.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 3 PUBLIC NOTICE—Continued**

(2) Failure to comply with a testing procedure established in 40 CFR part 141, except where a Tier 1 notice is required under § 141.202(a) or where the primacy agency determines that a Tier 2 notice is required;  
(3) Operation under a variance granted under Section 1415 or an exemption granted under Section 1416 of the Safe Drinking Water Act;  
(4) Availability of unregulated contaminant monitoring results, as required under § 141.207; and  
(5) Exceedance of the fluoride secondary maximum contaminant level (SMCL), as required under § 141.208.

(b) *When is the Tier 3 public notice to be provided?*

(1) Public water systems must provide the public notice not later than one year after the public water system learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice, the public water system must repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days (even if the violation or situation is resolved).

(2) (2) Instead of individual Tier 3 public notices, a public water system may use an annual report detailing all violations and situations that occurred during the previous twelve months, as long as the timing requirements of paragraph (b)(1) of this section are met.

(c) *What is the form and manner of the Tier 3 public notice?* Public water systems must provide the initial notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(1) Unless directed otherwise by the primacy agency in writing, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of

this section. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: Publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places or on the Internet; or delivery to community organizations.

(2) Unless directed otherwise by the primacy agency in writing, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in paragraph (c)(2)(i) of this section. Such persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include: Publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

(d) In what situations may the Consumer Confidence Report be used to meet the Tier 3 public notice requirements? For community water systems, the Consumer Confidence Report (CCR) required under Subpart O of this part may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as:

(1) The CCR is provided to persons served no later than 12 months after the system learns of the violation or situation as required under § 141.204(b);

(2) The Tier 3 notice contained in the CCR follows the content requirements under § 141.205; and

(3) The CCR is distributed following the delivery requirements under § 141.204(c).

#### § 141.205 Content of the public notice.

(a) What elements must be included in the public notice for violations of National Primary Drinking Water Regulations (NPDWR) or other situations requiring a public notice? When a public water system violates a NPDWR or has a situation requiring public notification, each public notice must include the following elements:

(1) A description of the violation or situation, including the contaminant(s) of concern, and (as applicable) the contaminant level(s);

(2) When the violation or situation occurred;

(3) Any potential adverse health effects from the violation or situation, including the standard language under paragraph (d)(1) or (d)(2) of this section, whichever is applicable;

(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(5) Whether alternative water supplies should be used;

(6) What actions consumers should take, including when they should seek medical help, if known;

(7) What the system is doing to correct the violation or situation;

(8) When the water system expects to return to compliance or resolve the situation;

(9) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and

(10) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (d)(3) of this section, where applicable.

(b) What elements must be included in the public notice for public water systems operating under a variance or exemption?

(1) If a public water system has been granted a variance or an exemption, the public notice must contain:

(i) An explanation of the reasons for the variance or exemption;

(ii) The date on which the variance or exemption was issued;

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(iv) A notice of any opportunity for public input in the review of the variance or exemption.

(2) If a public water system violates the conditions of a variance or exemption, the public notice must contain the ten elements listed in paragraph (a) of this section.

(c) How is the public notice to be presented?

(1) Each public notice required by this section:

(i) Must be displayed in a conspicuous way when printed or posted;

(ii) Must not contain overly technical language or very small print;

(iii) Must not be formatted in a way that defeats the purpose of the notice;

(iv) Must not contain language which nullifies the purpose of the notice.

(2) Each public notice required by this section must comply with multilingual requirements, as follows:

(i) For public water systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

(ii) In cases where the primacy agency has not determined what constitutes a large proportion of non-English speaking consumers, the public water system must include in the public notice the same information as in paragraph (c)(2)(i) of this section, where appropriate to reach a large proportion of non-English speaking persons served by the water system.

(d) What standard language must public water systems include in their public notice? Public water systems are required to include the following standard language in their public notice:

(1) Standard health effects language for MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption. Public water systems must include in each public notice the health effects language specified in Appendix B to this subpart corresponding to each MCL, MRDL, and treatment technique violation listed in Appendix A to this subpart, and for each violation of a condition of a variance or exemption.

(2) Standard language for monitoring and testing procedure violations. Public water systems must include the following language in their notice, including the language necessary to fill in the blanks, for all monitoring and testing procedure violations listed in Appendix A to this subpart:

We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [compliance period], we "did not monitor or test" or "did not complete all monitoring or testing" for [contaminant(s)], and therefore cannot be sure of the quality of your drinking water during that time.

(3) Standard language to encourage the distribution of the public notice to all persons served. Public water systems must include in their notice the following language (where applicable):

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

**§ 141.206 Notice to new billing units or new customers.**

(a) What is the requirement for community water systems? Community water systems must give a copy of the most recent public notice for any continuing violation, the existence of a variance or exemption, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

(b) What is the requirement for non-community water systems? Non-community water systems must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists.

**§ 141.207 Special notice of the availability of unregulated contaminant monitoring results.**

(a) When is the special notice to be given? The owner or operator of a community water system or non-transient, non-community water system required to monitor under § 141.40 must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

(b) What is the form and manner of the special notice? The form and manner of the public notice must follow the requirements for a Tier 3 public notice prescribed in §§ 141.204(c), (d)(1), and (d)(3). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

**§ 141.208 Special notice for exceedance of the SMCL for fluoride.**

(a) When is the special notice to be given? Community water systems that exceed the fluoride secondary maximum contaminant level (SMCL) of 2 mg/l as specified in § 143.3 (determined by the last single sample taken in accordance with § 141.23), but

do not exceed the maximum contaminant level (MCL) of 4 mg/l for fluoride (as specified in § 141.62), must provide the public notice in paragraph (c) of this section to persons served. Public notice must be provided as soon as practical but no later than 12 months from the day the water system learns of the exceedance. A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the State public health officer. The public water system must repeat the notice at least annually for as long as the SMCL is exceeded. If the public notice is posted, the notice must remain in place for as long as the SMCL is exceeded, but in no case less than seven days (even if the exceedance is eliminated). On a case-by-case basis, the primacy agency may require an initial notice sooner than 12 months and repeat notices more frequently than annually.

(b) What is the form and manner of the special notice? The form and manner of the public notice (including repeat notices) must follow the requirements for a Tier 3 public notice in § 141.204(c) and (d)(1) and (d)(3).

(c) What mandatory language must be contained in the special notice? The notice must contain the following language, including the language necessary to fill in the blanks:

This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/l) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system [*name*] has a fluoride concentration of [*insert value*] mg/l.

Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water.

Drinking water containing more than 4 mg/l of fluoride (the U.S. Environmental

Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/l of fluoride, but we're required to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l because of this cosmetic dental problem.

For more information, please call [name of water system contact] of [name of community water system] at [phone number]. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP."

**§ 141.209 Special notice for nitrate exceedances above MCL by non-community water systems (NCWS), where granted permission by the primacy agency under § 141.11(d)**

(a) When is the special notice to be given? The owner or operator of a non-community water system granted permission by the primacy agency under § 141.11(d) to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under § 141.202(a) and (b).

(b) What is the form and manner of the special notice? Non-community water systems granted permission by the primacy agency to exceed the nitrate MCL under § 141.11(d) must provide continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure, according to the requirements for Tier 1 notice delivery under § 141.202(c) and the content requirements under § 141.205.

**§ 141.210 Notice by primacy agency on behalf of the public water system.**

(a) May the primacy agency give the notice on behalf of the public water system? The primacy agency may give the notice required by this subpart on behalf of the owner and operator of the public water system if the primacy agency complies with the requirements of this subpart.

(b) What is the responsibility of the public water system when notice is given by the primacy agency? The owner or operator of the public water system remains responsible for ensuring that the requirements of this subpart are met.

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE <sup>1</sup>

Contaminant	MCL/MRDL/TT violations <sup>2</sup>		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
<b>I. Violations of National Primary Drinking Water Regulations (NPDWR):<sup>3</sup></b>				
<b>A. Microbiological Contaminants</b>				
1. Total coliform .....	2	141.63(a)	3	141.21(a)–(e)
2. Fecal coliform/E. coli .....	1	141.63(b)	<sup>4</sup> 1, 3	141.21(e)
3. Turbidity MCL .....	2	141.13(a)	3	141.22
4. Turbidity MCL (average of 2 days' samples >5 NTU) .....	<sup>5</sup> 2, 1	141.13(b)	3	141.22
5. Turbidity (for TT violations resulting from a single exceedance of maximum allowable turbidity level) .....	<sup>6</sup> 2, 1	141.71(a)(2), 141.71(c)(2)(i), 141.73(a)(2), 141.73(b)(2), 141.73(c)(2), 141.73(d), 141.173(a)(2), 141.173(b)	3	141.74(a)(1), 141.74(b)(2), 141.74(c)(1), 141.174
6. Surface Water Treatment Rule violations, other than violations resulting from single exceedance of max. allowable turbidity level (TT) .....	2	141.70–141.73	3	141.74
7. Interim Enhanced Surface Water Treatment Rule violations, other than violations resulting from single exceedance of max. turbidity level (TT) .....	2	<sup>7</sup> 141.170–141.173	3	141.172, 141.174
<b>B. Inorganic Chemicals (IOCs)</b>				
1. Antimony .....	2	141.62(b)	3	141.23(a), (c)
2. Arsenic .....	2	141.11(b), 141.23(n)	3	141.23(a), (l), (m)
3. Asbestos (fibers >10 μm) .....	2	141.62(b)	3	141.23(a)–(b)
4. Barium .....	2	141.62(b)	3	141.23(a), (c)
5. Beryllium .....	2	141.62(b)	3	141.23(a), (c)
6. Cadmium .....	2	141.62(b)	3	141.23(a), (c)
7. Chromium (total) .....	2	141.62(b)	3	141.23(a), (c)
8. Cyanide .....	2	141.62(b)	3	141.23(a), (c)
9. Fluoride .....	2	141.62(b)	3	141.23(a), (c)
10. Mercury (inorganic) .....	2	141.62(b)	3	141.23(a), (c)
11. Nitrate .....	1	141.62(b)	<sup>8</sup> 1, 3	141.23(a), (d), 141.23(f)(2)
12. Nitrite .....	1	141.62(b)	<sup>8</sup> 1, 3	141.23(a), (e), 141.23(f)(2)
13. Total Nitrate and Nitrite .....	1	141.62(b)	3	141.23(a)
14. Selenium .....	2	141.62(b)	3	141.23(a), (c)
15. Thallium .....	2	141.62(b)	3	141.23(a), (c)
<b>C. Lead and Copper Rule (Action Level for lead is 0.015 mg/L, for copper is 1.3 mg/L)</b>				
1. Lead and Copper Rule (TT) .....	2	141.80–141.85	3	141.86–141.89
<b>D. Synthetic Organic Chemicals (SOCs)</b>				
1. 2,4–D .....	2	141.61(c)	3	141.24(h)
2. 2,4,5–TP (Silvex) .....	2	141.61(c)	3	141.24(h)
3. Alachlor .....	2	141.61(c)	3	141.24(h)
4. Atrazine .....	2	141.61(c)	3	141.24(h)
5. Benzo(a)pyrene (PAHs) .....	2	141.61(c)	3	141.24(h)
6. Carbofuran .....	2	141.61(c)	3	141.24(h)
7. Chlordane .....	2	141.61(c)	3	141.24(h)
8. Dalapon .....	2	141.61(c)	3	141.24(h)
9. Di (2-ethylhexyl) adipate .....	2	141.61(c)	3	141.24(h)
10. Di (2-ethylhexyl) phthalate .....	2	141.61(c)	3	141.24(h)
11. Dibromochloropropane .....	2	141.61(c)	3	141.24(h)
12. Dinoseb .....	2	141.61(c)	3	141.24(h)
13. Dioxin (2,3,7,8-TCDD) .....	2	141.61(c)	3	141.24(h)
14. Diquat .....	2	141.61(c)	3	141.24(h)
15. Endothall .....	2	141.61(c)	3	141.24(h)
16. Endrin .....	2	141.61(c)	3	141.24(h)
17. Ethylene dibromide .....	2	141.61(c)	3	141.24(h)
18. Glyphosate .....	2	141.61(c)	3	141.24(h)
19. Heptachlor .....	2	141.61(c)	3	141.24(h)
20. Heptachlor epoxide .....	2	141.61(c)	3	141.24(h)
21. Hexachlorobenzene .....	2	141.61(c)	3	141.24(h)
22. Hexachlorocyclo-pentadiene .....	2	141.61(c)	3	141.24(h)
23. Lindane .....	2	141.61(c)	3	141.24(h)

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE <sup>1</sup>—Continued

Contaminant	MCL/MRDL/TT violations <sup>2</sup>		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
24. Methoxychlor .....	2	141.61(c)	3	141.24(h)
25. Oxamyl (Vydate) .....	2	141.61(c)	3	141.24(h)
26. Pentachlorophenol .....	2	141.61(c)	3	141.24(h)
27. Picloram .....	2	141.61(c)	3	141.24(h)
28. Polychlorinated biphenyls (PCBs) .....	2	141.61(c)	3	141.24(h)
29. Simazine .....	2	141.61(c)	3	141.24(h)
30. Toxaphene .....	2	141.61(c)	3	141.24(h)
<b>E. Volatile Organic Chemicals (VOCs)</b>				
1. Benzene .....	2	141.61(a)	3	141.24(f)
2. Carbon tetrachloride .....	2	141.61(a)	3	141.24(f)
3. Chlorobenzene (monochlorobenzene) .....	2	141.61(a)	3	141.24(f)
4. o-Dichlorobenzene .....	2	141.61(a)	3	141.24(f)
5. p-Dichlorobenzene .....	2	141.61(a)	3	141.24(f)
6. 1,2-Dichloroethane .....	2	141.61(a)	3	141.24(f)
7. 1,1-Dichloroethylene .....	2	141.61(a)	3	141.24(f)
8. cis-1,2-Dichloroethylene .....	2	141.61(a)	3	141.24(f)
9. trans-1,2-Dichloroethylene .....	2	141.61(a)	3	141.24(f)
10. Dichloromethane .....	2	141.61(a)	3	141.24(f)
11. 1,2-Dichloropropane .....	2	141.61(a)	3	141.24(f)
12. Ethylbenzene .....	2	141.61(a)	3	141.24(f)
13. Styrene .....	2	141.61(a)	3	141.24(f)
14. Tetrachloroethylene .....	2	141.61(a)	3	141.24(f)
15. Toluene .....	2	141.61(a)	3	141.24(f)
16. 1,2,4-Trichlorobenzene .....	2	141.61(a)	3	141.24(f)
17. 1,1,1-Trichloroethane .....	2	141.61(a)	3	141.24(f)
18. 1,1,2-Trichloroethane .....	2	141.61(a)	3	141.24(f)
19. Trichloroethylene .....	2	141.61(a)	3	141.24(f)
20. Vinyl chloride .....	2	141.61(a)	3	141.24(f)
21. Xylenes (total) .....	2	141.61(a)	3	141.24(f)
<b>F. Radioactive Contaminants</b>				
1. Beta/photon emitters .....	2	141.16	3	141.25(a), 141.26(b)
2. Alpha emitters .....	2	141.15(b)	3	141.25(a), 141.26(a)
3. Combined radium (226 & 228) .....	2	141.15(a)	3	141.25(a), 141.26(a)
<b>G. Disinfection Byproducts (DBPs), Byproduct Precursors, Disinfectant Residuals.</b> Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs). <sup>9</sup>				
1. Total trihalomethanes (TTHMs) .....	2	<sup>10</sup> 141.12, 141.64(a)	3	141.30, 141.132(a)–(b)
2. Haloacetic Acids (HAA5) .....	2	141.64(a)	3	141.132(a)–(b)
3. Bromate .....	2	141.64(a)	3	141.132(a)–(b)
4. Chlorite .....	2	141.64(a)	3	141.132(a)–(b)
5. Chlorine (MRDL) .....	2	141.65(a)	3	141.132(a), (c)
6. Chloramine (MRDL) .....	2	141.65(a)	3	141.132(a), (c)
7. Chlorine dioxide (MRDL), where any 2 consecutive daily samples at entrance to distribution system only are above MRDL .....	2	141.65(a), 141.133(c)(3)	2 <sup>11</sup> , 3	141.132(a), (c), 141.133(c)(2)
8. Chlorine dioxide (MRDL), where sample(s) in distribution system the next day are also above MRDL .....	<sup>12</sup> 1	141.65(a), 141.133(c)(3)	1	141.132(a), (c), 141.133(c)(2)
9. Control of DBP precursors—TOC (TT) .....	2	141.135(a)–(b)	3	141.132(a), (d)
10. Bench marking and disinfection profiling .....	N/A	N/A	3	141.172
11. Development of monitoring plan .....	N/A	N/A	3	141.132(f)
<b>H. Other Treatment Techniques</b>				
1. Acrylamide (TT) .....	2	141.111	N/A	N/A
2. Epichlorohydrin (TT) .....	2	141.111	N/A	N/A
<b>II. Unregulated Contaminant Monitoring:</b> <sup>13</sup>				
A. Unregulated contaminants .....	N/A	N/A	3	141.40
B. Nickel .....	N/A	N/A	3	141.23(c), (k)

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE <sup>1</sup>—Continued

Contaminant	MCL/MRDL/TT violations <sup>2</sup>		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
III. Public Notification for Variances and Exemptions:				
A. Operation under a variance or exemption .....	3	<sup>14</sup> 1415, 1416,	N/A	N/A
B. Violation of conditions of a variance or exemption .....	2	1415, 1416, <sup>15</sup> 142.307	N/A	N/A
IV. Other Situations Requiring Public Notification:				
A. Fluoride secondary maximum contaminant level (SMCL) exceedance .....	3	143.3	N/A	N/A
B. Exceedance of nitrate MCL for non-community systems, as allowed by primacy agency .....	1	141.11(d)	N/A	N/A
C. Availability of unregulated contaminant monitoring data .....	3	141.40	N/A	N/A
D. Waterborne disease outbreak .....	1	141.2, 141.71(c)(2)(ii)	N/A	N/A
E. Other waterborne emergency <sup>16</sup> .....	1	N/A	N/A	N/A
F. Other situations as determined by primacy agency .....	<sup>17</sup> 1, 2, 3	N/A	N/A	N/A

Appendix A—Endnotes

1. Violations and other situations not listed in this table (e.g., reporting violations and failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primary agency. Primacy agencies may, at their option, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).

2. MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique

3. The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

4. Failure to test for fecal coliform or E. coli is a Tier 1 violation if testing is not done after any repeat sample tests positive for coliform. All other total coliform monitoring and testing procedure violations are Tier 3.

5. Systems that violate the turbidity MCL of 5 NTU based on an average of measurements over two consecutive days must consult with the primacy agency within 24 hours after learning of the violation. Based on this consultation, the primacy agency may subsequently decide to elevate the violation to Tier 1. If a system is unable to make contact with the primacy agency in the 24-hour period, the violation is automatically elevated to Tier 1.

6. Systems with treatment technique violations involving a single exceedance of a maximum turbidity limit under the Surface Water Treatment Rule (SWTR) or the Interim Enhanced Surface Water Treatment Rule (IESWTR) are required to consult with the primacy agency within 24 hours after learning of the violation. Based on this consultation, the primacy agency may subsequently decide to elevate the violation

to Tier 1. If a system is unable to make contact with the primacy agency in the 24-hour period, the violation is automatically elevated to Tier 1.

7. Most of the requirements of the Interim Enhanced Surface Water Treatment Rule (63 FR 69477) (§§ 141.170–141.171, 141.173–141.174) become effective January 1, 2002 for Subpart H systems (surface water systems and ground water systems under the direct influence of surface water) serving at least 10,000 persons. However, § 141.172 has some requirements that become effective as early as April 16, 1999. The Surface Water Treatment Rule remains in effect for systems serving at least 10,000 persons even after 2002; the Interim Enhanced Surface Water Treatment Rule adds additional requirements and does not in many cases supercede the SWTR.

8. Failure to take a confirmation sample within 24 hours for nitrate or nitrite after an initial sample exceeds the MCL is a Tier 1 violation. Other monitoring violations for nitrate are Tier 3.

9. Subpart H community and non-transient non-community systems serving ≥10,000 must comply with new DBP MCLs, disinfectant MRDLs, and related monitoring requirements beginning January 1, 2002. All other community and non-transient non-community systems must meet the MCLs and MRDLs beginning January 1, 2004. Subpart H transient non-community systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2002. Subpart H transient non-community systems serving fewer than 10,000 persons and using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2004.

10. § 141.12 will no longer apply after January 1, 2004.

11. Failure to monitor for chlorine dioxide at the entrance to the distribution system the day after exceeding the MRDL at the entrance to the distribution system is a Tier 2 violation.

12. If any daily sample taken at the entrance to the distribution system exceeds the MRDL for chlorine dioxide and one or more samples taken in the distribution system the next day exceed the MRDL, Tier 1 notification is required. Failure to take the required samples in the distribution system after the MRDL is exceeded at the entry point also triggers Tier 1 notification.

13. Some water systems must monitor for certain unregulated contaminants listed in § 141.40.

14. This citation refers to §§ 1415 and 1416 of the Safe Drinking Water Act. §§ 1415 and 1416 require that “a schedule prescribed . . . for a public water system granted a variance [or exemption] shall require compliance by the system . . .”

15. In addition to §§ 1415 and 1416 of the Safe Drinking Water Act, 40 CFR 142.307 specifies the items and schedule milestones that must be included in a variance for small systems.

16. Other waterborne emergencies require a Tier 1 public notice under § 141.202(a) for situations that do not meet the definition of a waterborne disease outbreak given in 40 CFR 141.2 but that still have the potential to have serious adverse effects on health as a result of short-term exposure. These could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

17. Primacy agencies may place other situations in any tier they believe appropriate, based on threat to public health.

## APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG <sup>1</sup> mg/L	MCL <sup>2</sup> mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR):			
A. Microbiological Contaminants:			
1a. Total coliform .....	Zero	See footnote <sup>3</sup>	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
1b. Fecal coliform/E. coli .....	Zero	Zero	Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
2a. Turbidity (MCL) <sup>4</sup> .....	None	1 NTU <sup>5/5</sup> NTU	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
2b. Turbidity (SWTR TT) <sup>6</sup> .....	None	TT <sup>7</sup>	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
2c. Turbidity (IESWTR TT) <sup>8</sup> .....	None	TT	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
B. Surface Water Treatment Rule (SWTR) and Interim Enhanced Surface Water Treatment Rule (IESWTR) violations:			
3. Giardia lamblia (SWTR/IESWTR).	Zero	TT <sup>10</sup>	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
4. Viruses (SWTR/IESWTR).			
5. Heterotrophic plate count (HPC) bacteria <sup>9</sup> (SWTR/IESWTR).			
6. Legionella (SWTR/IESWTR).			
7. Cryptosporidium (IESWTR).			
8. Antimony .....	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
9. Arsenic .....	None	0.05	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
10. Asbestos (10 µm) .....	7 MFL <sup>11</sup>	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
11. Barium .....	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
12. Beryllium .....	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
13. Cadmium .....	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
14. Chromium (total) .....	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
15. Cyanide .....	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
16. Fluoride .....	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
17. Mercury (inorganic) .....	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—  
Continued

Contaminant	MCLG <sup>1</sup> mg/L	MCL <sup>2</sup> mg/L	Standard health effects language for public notification
18. Nitrate .....	10	10	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
19. Nitrite .....	1	1	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
20. Total Nitrate and Nitrite .....	10	10	Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
21. Selenium .....	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
22. Thallium .....	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
C. Lead and Copper Rule:			
23. Lead .....	Zero	TT <sup>12</sup>	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
24. Copper .....	1.3	TT <sup>13</sup>	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor. 11D. Synthetic Organic Chemicals (SOCs):
25. 2,4-D .....	0.07	0.07	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
26. 2,4,5-TP (Silvex) .....	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
27. Alachlor .....	Zero	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
28. Atrazine .....	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
29. Benzo(a)pyrene (PAHs) .....	Zero	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
30. Carbofuran .....	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
31. Chlordane .....	Zero	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
32. Dalapon .....	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
33. Di (2-ethylhexyl) adipate .....	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
34. Di (2-ethylhexyl) phthalate ....	Zero	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
35. Dibromochloropropane (DBCP).	Zero	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
36. Dinoseb .....	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
37. Dioxin (2,3,7,8-TCDD) .....	Zero	3×10 <sup>-8</sup>	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
38. Diquat .....	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—  
Continued

Contaminant	MCLG <sup>1</sup> mg/L	MCL <sup>2</sup> mg/L	Standard health effects language for public notification
39. Endothall .....	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
40. Endrin .....	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
41. Ethylene dibromide .....	Zero	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
42. Glyphosate .....	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
43. Heptachlor .....	Zero	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
44. Heptachlor epoxide .....	Zero	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
45. Hexachlorobenzene .....	Zero	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
46. Hexachlorocyclo-pentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
47. Lindane .....	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
48. Methoxychlor .....	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
49. Oxamyl (Vydate) .....	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
50. Pentachlorophenol .....	Zero	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
51. Picloram .....	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
52. Polychlorinated biphenyls (PCBs).	Zero	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
53. Simazine .....	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
54. Toxaphene .....	Zero	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer. 11E. Volatile Organic Chemicals (VOCs):
55. Benzene .....	Zero	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
56. Carbon tetrachloride .....	Zero	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
57. Chlorobenzene (monochlorobenzene).	0.1	0.1	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
58. <i>o</i> -Dichlorobenzene .....	0.6	0.6	Some people who drink water containing <i>o</i> -dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
59. <i>p</i> -Dichlorobenzene .....	0.075	0.075	Some people who drink water containing <i>p</i> -dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
60. 1,2-Dichloroethane .....	Zero	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
61. 1,1-Dichloroethylene .....	0.007	0.007	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—  
Continued

Contaminant	MCLG <sup>1</sup> mg/L	MCL <sup>2</sup> mg/L	Standard health effects language for public notification
62. <i>cis</i> -1,2-Dichloroethylene .....	0.07	0.07	Some people who drink water containing <i>cis</i> -1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
63. <i>trans</i> -1,2-Dichloroethylene ....	0.1	0.1	Some people who drink water containing <i>trans</i> -1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
64. Dichloromethane .....	Zero	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
65. 1,2-Dichloropropane .....	Zero	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
66. Ethylbenzene .....	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
67. Styrene .....	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
68. Tetrachloroethylene .....	Zero	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
69. Toluene .....	1	1	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
70. 1,2,4-Trichlorobenzene .....	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
71. 1,1,1-Trichloroethane .....	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
72. 1,1,2-Trichloroethane .....	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
73. Trichloroethylene .....	Zero	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
74. Vinyl chloride .....	Zero	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
75. Xylenes (total) .....	10	10	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
76. Beta/photon emitters .....	Zero	4 mrem/yr <sup>14</sup>	11F. Radioactive Contaminants: Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
77. Alpha emitters .....	Zero	15 pCi/L <sup>15</sup>	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
78. Combined radium (226 & 228).	Zero	5 pCi/L	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
G. Disinfection Byproducts (DBPs), Byproduct Precursors, and Disinfectant Residuals: Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection by-products (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs): <sup>16</sup>			
79. Total trihalomethanes (TTHMs).	N/A	0.10/ 0.080 <sup>17 18</sup>	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—  
Continued

Contaminant	MCLG <sup>1</sup> mg/L	MCL <sup>2</sup> mg/L	Standard health effects language for public notification
80. Haloacetic Acids (HAA) .....	N/A	0.060 <sup>19</sup>	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
81. Bromate .....	Zero	0.010	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
82. Chlorite .....	0.08	1.0	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
83. Chlorine .....	4 (MRDLG) <sup>20</sup>	4.0 (MRDL) <sup>21</sup>	Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
84. Chloramines .....	4 (MRDLG)	4.0 (MRDL)	Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
85a. Chlorine dioxide, where any 2 consecutive daily samples taken at the entrance to the distribution system are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. <i>Add for public notification only:</i> The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
85b. Chlorine dioxide, where one or more distribution system samples are above the MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. <i>Add for public notification only:</i> The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
86. Control of DBP precursors (TOC).	None	TT	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection by-products. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
H. Other Treatment Techniques:			
87. Acrylamide .....	Zero	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
88. Epichlorohydrin .....	Zero	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

**Appendix B—Endnotes**

1. MCLG—Maximum contaminant level goal

2. MCL—Maximum contaminant level

3. For water systems analyzing at least 40 samples per month, no more than 5.0 percent of the monthly samples may be positive for total coliforms. For systems analyzing fewer than 40 samples per month, no more than one sample per month may be positive for total coliforms.

4. There are various regulations that set turbidity standards for different types of

systems, including 40 CFR 141.13, the 1989 Surface Water Treatment Rule, and the 1998 Interim Enhanced Surface Water Treatment Rule. The MCL for the monthly turbidity average is 1 NTU; the MCL for the 2-day average is 5 NTU for systems that are required to filter but have not yet installed filtration (40 CFR 141.13).

5. NTU—Nephelometric turbidity unit

6. There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, the 1989 Surface Water Treatment Rule (SWTR), and the 1998 Interim Enhanced Surface Water

Treatment Rule (IESWTR). Systems subject to the Surface Water Treatment Rule (both filtered and unfiltered) may not exceed 5 NTU. In addition, in filtered systems, 95 percent of samples each month must not exceed 0.5 NTU in systems using conventional or direct filtration and must not exceed 1 NTU in systems using slow sand or diatomaceous earth filtration or other filtration technologies approved by the primacy agency.

7. TT—Treatment technique

8. There are various regulations that set turbidity standards for different types of

systems, including 40 CFR 141.13, the 1989 Surface Water Treatment Rule (SWTR), and the 1998 Interim Enhanced Surface Water Treatment Rule (IESWTR). For systems subject to the IESWTR (systems serving at least 10,000 people, using surface water or ground water under the direct influence of surface water), that use conventional filtration or direct filtration, after January 1, 2002, the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the IESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency.

9. The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

10. SWTR and IESWTR treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

11. The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

12. Millions fibers per liter.

13. Action Level = 0.015 mg/L

14. Action Level = 1.3 mg/L

15. Millirems per year

16. Picocuries per liter

17. Surface water systems and ground water systems under the direct influence of surface water are regulated under Subpart H of 40 CFR 141. Subpart H community and non-transient non-community systems serving  $\geq 10,000$  must comply with DBP MCLs and disinfectant maximum residual disinfectant levels (MRDLs) beginning January 1, 2002. All other community and non-transient noncommunity systems must meet the MCLs and MRDLs beginning January 1, 2004. Subpart H transient non-community systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2002. Subpart H transient non-community systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2004.

18. The MCL of 0.10 mg/l for TTHMs is in effect until January 1, 2002 for Subpart H community water systems serving 10,000 or more. This MCL is in effect until January 1, 2004 for community water systems with a population of 10,000 or more using only ground water not under the direct influence of surface water. After these deadlines, the MCL will be 0.080 mg/l. On January 1, 2004, all systems serving less than 10,000 will have to comply with the new MCL as well.

19. The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.

20. The MCL for haloacetic acids is the sum of the concentrations of the individual haloacetic acids.

21. MRDLG—Maximum residual disinfectant level goal.

22. MRDL—Maximum residual disinfectant level.

#### Appendix C to Subpart Q of Part 141—List of Acronyms Used in Public Notification Regulation

CCR	Consumer Confidence Report
CWS	Community Water System
DBP	Disinfection Byproduct
EPA	Environmental Protection Agency
HPC	Heterotrophic Plate Count
IESWTR	Interim Enhanced Surface Water Treatment Rule
IOC	Inorganic Chemical
LCR	Lead and Copper Rule
MCL	Maximum Contaminant Level
MCLG	Maximum Contaminant Level Goal
MRDL	Maximum Residual Disinfectant Level
MRDLG	Maximum Residual Disinfectant Level Goal
NCWS	Non-Community Water System
NPDWR	National Primary Drinking Water Regulation
NTNCWS	Non-Transient Non-Community Water System
NTU	Nephelometric Turbidity Unit
OGWDW	Office of Ground Water and Drinking Water
OW	Office of Water
PN	Public Notification
PWS	Public Water System
SDWA	Safe Drinking Water Act
SMCL	Secondary Maximum Contaminant Level
SOC	Synthetic Organic Chemical
SWTR	Surface Water Treatment Rule
TCR	Total Coliform Rule
TT	Treatment Technique
TWS	Transient Non-Community Water System
VOC	Volatile Organic Chemical

#### PART 142—[AMENDED]

1. The authority citation for Part 142 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g-1, 300g-2, 300 g-3, 300g-4, 300 g-5, 300 g-6, 300 j-4, 300 j-9, and 300 j-11.

2. Section 142.10 is amended by revising paragraph (b)(6)(v) to read as follows:

#### § 142.10 Requirements for a determination of primary enforcement responsibility.

(b) \* \* \*

(6) \* \* \*

(v) Authority to require public water systems to give public notice that is no less stringent than the EPA requirements in Subpart Q of Part 141 of this chapter and § 142.16(a).

3. Section 142.14 is amended by redesignating paragraph (f) as (g) and adding a new (f), to read as follows:

#### § 142.14 Records kept by States.

\* \* \* \* \*

(f) Public notification records under Subpart Q of Part 141 of this chapter received from public water systems (including certifications of compliance and copies of public notices) and any state determinations establishing alternative public notification requirements for the water systems must be retained for three years.

\* \* \* \* \*

4. Section 142.15 is amended by revising paragraph (a)(1), to read as follows:

#### § 142.15 Reports by States.

\* \* \* \* \*

(a) \* \* \*

(1) New violations by public water systems in the State during the previous quarter of State regulations adopted to incorporate the requirements of national primary drinking water regulations, including violations of the public notification requirements under Subpart Q of Part 141 of this chapter;

\* \* \* \* \*

5. Section 142.16 is amended by revising paragraph (a), to read as follows:

#### § 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 (8))*—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.”

\* \* \* \* \*

#### § 142.16 [Amended]

6. Section 142.16(e) introductory text is amended by removing “§ 141.32”.

#### PART 143—[AMENDED]

1. The authority citation for Part 143 continues to read as follows:

**Authority:** 42 U.S.C. 300f *et seq.*

#### § 143.5 [Removed]

2. Part 143 is amended by removing § 143.5.

[FR Doc. 00–9534 Filed 5–3–00; 8:45 am]

BILLING CODE 6560–50–P