Friday
January 8, 1999

Part VIII

Environmental Protection Agency

40 CFR Part 141

Suspension of Unregulated Contaminant Monitoring Requirements for Small Public Water Systems; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6216–9]

Suspension of Unregulated Contaminant Monitoring Requirements for Small Public Water Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on the Unregulated Contaminant Monitoring Regulation (UCMR) for public water systems. The UCMR requires all public water systems to monitor for unregulated contaminants during one year every five years. This direct final rule concerns the suspension of monitoring by small and medium systems for monitoring scheduled to begin after December 31, 1998. EPA is suspending this monitoring since the revised UCMR program, required by the 1996 Safe Drinking Water Act Amendments, is projected to begin during this third round of monitoring. This will allow systems serving 10,000 or fewer persons to save the cost of monitoring under the existing regulation, which if performed as scheduled would overlap with monitoring under the revised UCMR program.

DATES: The regulation is effective on March 9, 1999 without further notice unless EPA receives adverse comment by February 8, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. EST on January 22, 1999 as provided in 40 CFR 23.7.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–98–29, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references). The full record for this document has been established under docket number W–98–29 and includes supporting documentation as well as printed, paper versions of electronic comments. The full record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, USEPA, 401 M Street, SW, Washington DC. For access to docket materials, please call 202–260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Charles Job, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, (202) 260–7084 or Rachel Sakata, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, (202) 260–2527. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

SUPPLEMENTARY INFORMATION:

Preamble Outline

Potentially Regulated Entities: The regulated entities are public water systems. All large community and nontransient non-community water systems serving more than 10,000 persons would be required to monitor. A community water system means a public water system which serves at least 15 public service connections used by year-round residents or regularly serves at least 25 year-round residents. Nontransient non-community water system means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. Only a national representative sample of community and non-transient non-community systems serving 10,000 or fewer persons would be required to monitor. Transient non-community systems (i.e., systems that do not regularly serve at least 25 of the same persons over six months per year) would not be required to monitor. States, Territories, and Tribes with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples and would be regulated by this action. Categories and entities that may ultimately be regulated include the following:

Category	Examples of potentially regulated entities	SIC
State, Tribal and Territorial Governments.	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that themselves operate community and nontransient non-community water systems required to monitor.	9511
Industry	Private operators of community and nontransient non-community water systems required to monitor	4941
Municipalities	Municipal operators of community and nontransient non-community water systems required to monitor	9511

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Proposed Rule Canceling Monitoring for Systems Serving 10,000 or Fewer Persons under Existing Regulation, 40 CFR 141.40

I. Background

The requirement to monitor unregulated contaminants was first

established by the 1986 Amendments to the Safe Drinking Water Act. The current Unregulated Contaminant Monitoring (UCM) Program implemented under 40 CFR 141.40 was established under three separate rulemakings (See **Federal Register** documents at 52 FR 25720 (July 8, 1987), 56 FR 3526 (January 30, 1991), and 57 FR 31776 (July 17, 1992)). This program includes 34 contaminants listed below in Table 1 which are to be monitored by all community and non-transient non-community water systems and 14 contaminants that are only required to be monitored at the discretion of the State. Systems serving fewer than 150 service connections were waived from monitoring provided that they sent a letter to the State by January 1, 1991, or January 1, 1994, depending upon the contaminant(s), making their facilities available to the states for monitoring. Under 40 CFR 142.15, primacy states must report the results of this monitoring to EPA. Repeat monitoring is required every 5 years.

Table 1.—List of the Current Unregulated Contaminants

Contaminants Required for Monitoring

Aldicarb
Aldicarb sulfone
Aldicarb sulfoxide
Aldrin
Bromobenzene
Bromodichloromethane
Bromoform
Bromomethane (methyl bromide)
Butachlor
Carbaryl
Chlorodibromomethane
Chloroethane
Chloroform
Chloromethane
o-Chlorotoluene
p-Chlorotoluene
Dibromomethane
Dicamba
m-Dichlorobenzene
1,1-Dichloroethane
2,2-Dichloropropane
1,3-Dichloropropane
1,1-Dichloropropene
1,3-Dichloropropene
Dieldrin
3-Hydroxycarbofuran
Methomyl
Metolachlor
Metribuzin
Propachlor
Sulfate
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
1,2,3-Trichloropropane

Contaminants for Which Monitoring Was Required at the Discretion of the State

Bromochloromethane
sec-Butylbenzene
n-Butylbenzene
tert-Butylbenzene
Dichlorodifluoromethane
Fluorotrichloromethane
Hexachlorobutadine
Isopropylbenzene
p-Isopropyltoluene
Naphthalene
n-Propylbenzene
1,2,3-Trichlorobenzene
1,2,4-Trimethylbenzene
1,3,5-Trimethylbenzene

Under the requirement to monitor every five years, systems serving more than 10,000 persons were to begin their third round of monitoring for these unregulated contaminants no later than January 1, 1998. Systems serving 3,300 to 10,000 persons were to begin their third monitoring round no later than January 1, 1999, affecting 3,410 systems nationwide. Systems serving less than 3,300 are required to begin their third monitoring round no later than January 1, 2001, affecting approximately 22,000 systems nationwide.

II. Today's Action

EPA is suspending the continuing requirement for small systems to monitor every 5 years under the existing regulation. Under today's action, systems serving 3,300 to 10,000 persons will not be required to monitor after the rule is effective and systems serving less than 3,300 persons will not be required to monitor after January 1, 2001. Effective January 1, 1999, EPA is suspending monitoring that would be required to begin on or after that date. Any additional monitoring for these systems will be a part of EPA's revision of the UCM regulations, due by August 1999. This suspension does not eliminate the requirement to monitor during monitoring rounds one and two, which were required to begin in 1989 and 1994 respectively.

The reasons for this suspension of existing monitoring for systems serving 10,000 or fewer persons are:

(a) The 1996 amendments to the SDWA require EPA to overhaul the UCM program, with changes to the list of contaminants as well as the number of systems that will need to monitor. The statutory deadline for the revised UCM program is August 6, 1999.

(b) Beginning January 1, 1999, most systems serving 3,300 to 10,000 persons will need to initiate another round of monitoring for the contaminants on the existing monitoring. Under the revised program, this list of contaminants will change and many of these systems will not need to monitor for the new list of contaminants.

(c) EPA already has received results from 28,000 systems from two previous rounds of monitoring.

(d) EPA will have monitoring results from large systems (serving more than 10,000 persons) for a third monitoring round which was to begin no later than January 1, 1998. This will provide sufficient confirming information on the occurrence of contaminants and any additional action that EPA might need to take with regard to these contaminants.

Therefore, because additional monitoring under the soon-to-be-superceded program is unnecessary and burdensome for small systems, EPA believes that the monitoring requirements for these systems should be suspended.

This direct final rule grew out of the regulation development process for the Unregulated Contaminant Monitoring Regulation. The UCMR workgroup unanimously agrees that the cancellation of unregulated contaminant monitoring requirements demonstrates good government. This is because the proposed timing of the revised monitoring program occurs close to the time of monitoring required by small systems under the existing UCMR rule. The workgroup felt it was appropriate to suspend monitoring because adequate data existed to assist EPA in future regulatory decisions.

III. Cost Savings to Public Water Systems Affected by This Action

Since this action is deregulatory in nature, a cost savings will accrue to these systems. EPA estimates that the cost for the affected systems to monitor is $1,778,000 each year. Since these small systems will not incur these costs, this rule results in cost savings to them.

IV. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and 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 recipients thereof; or

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

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

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (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.

This 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. EPA believes that the Agency will have sufficient data from the previous unregulated contaminant monitoring (three monitoring rounds by systems serving more than 10,000 persons, and two monitoring rounds by systems serving 10,000 or fewer persons) to enable it to conduct the exposure assessments necessary for this sensitive subpopulation.

C. 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule does not impose any enforceable duties on these entities. Further, this rule withdraws existing requirements, resulting in an estimated cost savings to these governments and the private sector of $553,500 each year, since they would no longer incur these costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

Under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.*, information collection requirements must be submitted to the Office of Management and Budget (OMB) for approval. An Information Collection Request (ICR) document for existing requirements was previously prepared by EPA (ICR No. 270.39) and approved by OMB (OMB No. 2040–0090) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at: farmer.sandy@epamail.epa.gov, or by calling: (202) 260–2740. However, this rule suspends the reporting requirements previously approved as they relate to small systems. The Agency believes that by eliminating this required monitoring in the years 1999 and 2000 and beyond, reporting requirements will be commensurately reduced for state and local entities affected. EPA estimates the reduction in burden hours to be 3,774 hours, accruing in a total savings of $106,000.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by SBREFA, EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Because this rule removes existing requirements and does not add any new requirements, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities and will in fact have a positive impact on them by reducing monitoring requirements in years 1999 and 2000 and beyond.

F. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget (OMB), an explanation for the reasons for not using such standards.

Since this action establishes no technical standards, the requirements of this Act do not apply to today's action.

G. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898—''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994) focuses federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities.

EPA believes that the Agency will have sufficient data from the previous unregulated contaminant monitoring (three monitoring rounds by systems serving more than 10,000 persons, and two monitoring rounds by systems serving 10,000 or fewer persons) to enable it to conduct any assessments necessary for these populations.

H. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. 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.''

This rule does not impose any enforceable duties or any compliance costs on Indian tribal governments. Thus, today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive order 13084 do not apply to this rule.

J. Administrative Procedure Act

EPA is publishing this rule without prior proposal because it views this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for the suspension of monitoring for unregulated contaminants by systems serving 10,000 or fewer persons if adverse comments are filed. This rule will be effective on March 9, 1999 without further notice unless EPA receives adverse comment by February 8, 1999. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

K. 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 5 U.S.C. 804 (2). This rule will be effective on March 9, 1999 unless EPA receives adverse comment and withdraws this rule before that date.

V. Public Involvement in Regulation Development

EPA's Office of Ground Water and Drinking Water has developed a process for stakeholder involvement in its regulatory activities to provide early input to regulation development. Activities related to the Unregulated Contaminant Monitoring Program include specific meetings focused on revising the unregulated contaminant monitoring regulations to address the 1996 SDWA Amendments and the possibility of eliminating future monitoring under the existing unregulated contaminant monitoring regulation for systems serving 10,000 or fewer persons.

OGWDW held its first stakeholder meeting to discuss options for the development of the Unregulated Contaminant Monitoring Regulation on December 2–3, 1997, in Washington, DC. A range of stakeholders attended that meeting, including representatives of public water systems, states, industry, health and laboratory organizations, and the public. OGWDW staff prepared a background document for that meeting, *Options for Developing the Unregulated Contaminant Monitoring Regulation* (Working Draft), EPA 815–D–97–003, November 1997. A summary of that meeting is also available. Prior to preparation of the UCMR regulation, EPA also held a second stakeholders meeting on June 3–4, 1998, to obtain input from interested on significant issues evolving from drafting the regulation that needed further public input. OGWDW staff prepared a public review document for that meeting, *Background Information and Draft Annotated Outline for a Proposed Unregulated Contaminant Monitoring Regulation,* Background Document,

(Working Draft), May 1998. A meeting summary is available.

Both meetings addressed the option of suspending unregulated contaminant monitoring requirements for small public water systems. Subsequent discussions with environmental organizations identified their interest in having sufficient data to make regulatory decisions for the current list of unregulated contaminants. Based on the data EPA has from the first two monitoring rounds, EPA has made decisions whether or not to regulate these contaminants. The contaminants from this list selected for regulatory decisions are identified in the Contaminant Candidate List, published March 2, 1998 in the **Federal Register** (63 FR 10273). Additionally, the associations representing the water supply industry expressed their support for this regulation. They indicated that because the contaminants on the existing list are tested using the same methods for regulated organic chemical testing, the costs to test for additional contaminant should be minimal.

In general, the result of this public input is support for eliminating existing unregulated contaminant monitoring requirements for systems serving 10,000 or fewer persons so they will not have to monitor for the existing list of unregulated contaminants in years 1999 and 2000 or beyond.

List of Subjects in 40 CFR Part 141

Environmental protection, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: December 31, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

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, and 300j–9.

2. Section 141.40 is amended by adding a sentence to the end of paragraph (l) to read as follows:

§ 141.40 Special monitoring for inorganic and organic contaminants.

* * * * *

(1) * * * Systems serving 10,000 or fewer persons are not required to monitor for the contaminants in this section after December 31, 1998.

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[FR Doc. 99–321 Filed 1–7–99; 8:45 am]

BILLING CODE 6560–50–P