

2. How Was This Proposal Developed?

In 2000, EPA published the Public Notification Rule (65 FR 25982, May 4, 2000) (USEPA 2000d), which revised the general public notification regulations for public water systems in order to implement the public notification requirements of the 1996 SDWA amendments. This regulation established 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 a NPDWR, have a variance or exemption from the drinking water regulations, or are facing other situations posing a risk to public health. The public notification requirements divide violations into three categories (Tier 1, Tier 2 and Tier 3) based on the seriousness of the violations, with each tier having different public notification requirements.

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. Tier 1 violations contain language specified by EPA that concisely and in non-technical terms conveys to the public the adverse health effects that may occur as a result of the violation. States and water utilities may add additional information to each notice, as deemed appropriate for specific situations. A State may elevate to Tier 1 other violations and situations with significant potential to have serious adverse health effects from short-term exposure, as determined by the State.

Tier 2 public notices address other violations with potential to have serious adverse health effects on human health. Tier 2 notices are required for the following situations:

- All violations of the MCL, maximum residual disinfectant level (MRDL) and treatment technique requirements, except where a Tier 1 notice is required or where the State determines that a Tier 1 notice is required; and
- Failure to comply with the terms and conditions of any existing variance or exemption.

Tier 3 public notices include all other violations and situations requiring public notice, including the following situations:

- A monitoring or testing procedure violation, except where a Tier 1 or 2

notice is already required or where the State has elevated the notice to Tier 1 or 2; and

- Operation under a variance or exemption.

The State, at its discretion, may elevate the notice requirement for specific monitoring or testing procedures from a Tier 3 to a Tier 2 notice, taking into account the potential health impacts and persistence of the violation.

As part of the IESWTR, EPA established health effects language for violations of treatment technique requirements for microbiological contaminants. EPA believes this language, which was developed with consideration of *Cryptosporidium* health effects, is appropriate for violations of additional *Cryptosporidium* treatment requirements under the LT2ESWTR.

3. Request for Comment

EPA requests comment on whether the violations of additional treatment requirements for *Cryptosporidium* under the LT2ESWTR should require a Tier 2 public notice and whether the proposed health effects language is appropriate.

H. Variances and Exemptions

SDWA section 1415 allows States to grant variances from national primary drinking water regulations under certain conditions; section 1416 establishes the conditions under which States may grant exemptions to MCL or treatment technique requirements. For the reasons presented in the following discussion, EPA has determined that systems will not be eligible for variances or exemptions to the requirements of the LT2ESWTR.

1. Variances

Section 1415 specifies two provisions under which general variances to treatment technique requirements may be granted:

(1) A State that has primacy may grant a variance to a system from any requirement to use a specified treatment technique for a contaminant if the system demonstrates to the satisfaction of the State that the treatment technique is not necessary to protect public health because of the nature of the system's raw water source. EPA may prescribe monitoring and other requirements as conditions of the variance (section 1415(a)(1)(B)).

(2) EPA may grant a variance from any treatment technique requirement upon a showing by any person that an alternative treatment technique not included in such requirement is at least

as efficient in lowering the level of the contaminant (section 1415(a)(3)).

EPA does not believe the first provision for granting a variance is applicable to the LT2ESWTR because *Cryptosporidium* treatment technique requirements under this rule account for the degree of source water contamination. Systems initially comply with the LT2ESWTR by conducting source water monitoring for *Cryptosporidium*. Filtered systems are required to provide additional treatment for *Cryptosporidium* only if the source water concentration exceeds a level where current treatment does not provide sufficient protection. All unfiltered systems are required to provide a baseline of 2 log inactivation of *Cryptosporidium* to achieve finished water risk levels comparable to filtered systems; however, unfiltered systems are required to achieve 3 log inactivation only if the source water level exceeds 0.01 oocysts/L.

The second provision for granting a variance is not applicable to the LT2ESWTR because the treatment technique requirements of this rule specify the degree to which systems must lower their source water *Cryptosporidium* level (e.g., 4, 5, and 5.5 log reduction in Bins 2, 3, and 4, respectively). The LT2ESWTR provides broad flexibility in how systems achieve the required level of *Cryptosporidium* reduction, as shown in the discussion of the microbial toolbox in section VI.C. Moreover, the microbial toolbox contains an option for Demonstration of Performance, under which States can award treatment credit based on the demonstrated efficiency of a treatment process in reducing *Cryptosporidium* levels. Thus, there is no need for this type of variance under the LT2ESWTR.

SDWA section 1415(e) describes small system variances, but these cannot be granted for a treatment technique for a microbial contaminant. Hence, small system variances are not allowed for the LT2ESWTR.

2. Exemptions

Under SDWA section 1416(a), a State may exempt any public water system from a treatment technique requirement upon a finding that (1) due to compelling factors (which may include economic factors such as qualification of the system as serving a disadvantaged community), the system is unable to comply with the requirement or implement measures to develop an alternative source of water supply; (2) the system was in operation on the effective date of the treatment technique requirement, or for a system that was not in operation by that date, no