

For the purposes of these requirements, a sanitary survey, as conducted by EPA, is an onsite review of the water source (identifying sources of contamination by using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations, and the distribution of safe drinking water. A significant deficiency includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

V. State Implementation

This section describes the regulations and other procedures and policies States will be required to adopt to implement the LT2ESWTR, if finalized as proposed today. States must continue to meet all other conditions of primacy in 40 CFR Part 142.

The Safe Drinking Water Act (Act) establishes requirements that a State or eligible Indian tribe must meet to assume and maintain primary enforcement responsibility (primacy) for its public water systems. These requirements include: (1) Adopting drinking water regulations that are no less stringent than Federal drinking water regulations, (2) adopting and implementing adequate procedures for enforcement, (3) keeping records and making reports available on activities that EPA requires by regulation, (4) issuing variances and exemptions (if allowed by the State), under conditions no less stringent than allowed under the Act, and (5) adopting and being capable of implementing an adequate plan for the provisions of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water supply supervision program as authorized under section 1413 of the Act. In addition to adopting basic primacy requirements specified in 40 CFR Part 142, States may be required to adopt special primacy provisions pertaining to specific regulations where implementation of the rule involves activities beyond general primacy provisions. States must include these regulation specific provisions in an application for approval of their program revision. Primacy requirements for today's proposal are discussed below.

To implement the proposed LT2ESWTR, States will be required to adopt revisions to:

- § 141.2—Definitions
- § 141.71—Criteria for avoiding filtration
- § 141.153—Content of the reports
- § 141.170—Enhanced filtration and disinfection
- Subpart Q—Public Notification
- New Subpart W—Additional treatment technique requirements for *Cryptosporidium*
- § 142.14—Records kept by States
- § 142.15—Reports by States
- § 142.16—Special primacy requirements

A. Special State Primacy Requirements

To ensure that a State program includes all the elements necessary for an effective and enforceable program under today's rule, a State primacy application must include a description of how the State will perform the following:

- (1) Approve watershed control programs for the 0.5 log watershed control program credit in the microbial toolbox (see section IV.C.2);
- (2) Assess significant changes in the watershed and source water as part of the sanitary survey process and determine appropriate follow-up action (see section IV.A);
- (3) Determine that a system with an uncovered finished water storage facility has a risk mitigation plan that is adequate for purposes of waiving the requirement to cover the storage facility or treat the effluent (see section IV.E);
- (4) Approve protocols for removal credits under the Demonstration of Performance toolbox option (see section IV.C.17) and for site specific chlorine dioxide and ozone CT tables (see section IV.C.14); and
- (5) Approve laboratories to analyze for *Cryptosporidium*.

Note that a State program can be more, but not less, stringent than Federal regulations. As such, some of the elements listed here may not be applicable to a specific State program. For example, if a State chooses to require all finished water storage facilities to be covered or provide treatment and not to allow a risk mitigation plan to substitute for this requirement, then the description for item (3) would be inapplicable.

B. State Recordkeeping Requirements

The current regulations in § 142.14 require States with primacy to keep various records, including the following: Analytical results to determine compliance with MCLs, MRDLs, and treatment technique requirements; system inventories; State approvals; enforcement actions; and the

issuance of variances and exemptions. The proposed LT2ESWTR will require States to keep additional records of the following, including all supporting information and an explanation of the technical basis for each decision:

- Results of source water *E. coli* and *Cryptosporidium* monitoring;
- *Cryptosporidium* bin classification for each filtered system, including any changes to initial bin classification based on review of the watershed during sanitary surveys or the second round of monitoring;
- Determination of whether each unfiltered system has a mean source water *Cryptosporidium* level above 0.01 oocysts/L;
- The treatment processes or control measures that each system employs to meet *Cryptosporidium* treatment requirements under the LT2ESWTR; this includes documentation to demonstrate compliance with required design and implementation criteria for receiving credit for microbial toolbox options, as specified in section IV.C;
- A list of systems required to cover or treat the effluent of an uncovered finished water storage facilities; and
- A list of systems for which the State has waived the requirement to cover or treat the effluent of an uncovered finished water storage facility, along with supporting documentation of the risk mitigation plan.

C. State Reporting Requirements

EPA currently requires in § 142.15 that States report to EPA information such as violations, variance and exemption status, and enforcement actions. The LT2ESWTR, as proposed, will add additional reporting requirements in the following area:

- The *Cryptosporidium* bin classification for each filtered system, including any changes to initial bin classification based on review of the watershed during sanitary surveys or the second round of monitoring;
- The determination of whether each unfiltered system has a mean source water *Cryptosporidium* level above 0.01 oocysts/L, including any changes to this determination based on the second round of monitoring.

D. Interim Primacy

On April 28, 1998, EPA amended its State primacy regulations at 40 CFR 142.12 to incorporate the new process identified in the 1996 SDWA Amendments for granting primary enforcement authority to States while their applications to modify their primacy programs are under review (63 FR 23362, April 28, 1998) (USEPA 1998f). The new process grants interim