

governments to get needed compliance assistance from their States, and to promote more effective management of environmental responsibilities by local governments.

The following sections discuss the revised term used to describe entities eligible for participation under the policy, proposed revisions to the population cap and to the requirement of comprehensive assistance at all of a local government's operations, and the proposed addition of an EMS option.

A. Entities Eligible To Receive all Benefits

The 1995 *Small Communities Policy* applied to "small communities", which EPA defined as "communities, generally comprised of fewer than 2,500 residents, [that are]:

- Non-profit
- Governing entities (incorporated or unincorporated)
- That own facilities that supply municipal services.

EPA now proposes to minimize possible confusion by replacing the term "community" with the term "local government", thereby designating familiar, legally-defined entities as those entities eligible to receive benefits under the policy. Although EPA originally adopted a broad definition of eligible entities to provide States flexibility to develop compliance assistance programs that addressed the State's particular needs, in the seven years the policy has been in force, EPA has seen no evidence that States wish to offer comprehensive environmental compliance assistance to communities that are not traditional units of local government. EPA's proposal derives its definition of "local government" from United States Census Bureau definitions (see, www.census.gov/geo/www/tiger/glossary.html#glossary) related to "governmental unit". As used by the policy, the term "local government" can mean any organized unit of government authorized in a State's constitution and statutes, and established to provide general government for a defined area. This includes governments designated as a county, parish (in Louisiana), municipality, borough, city, village, town, township, or plantation (in Maine).

EPA acknowledges that this definition differs from "local government" as defined in Section 2 of the Homeland Security Act of 2002 (Pub. L. 107-296). For the purposes of that Act, Congress defined 'local government' as:

(A) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of

governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) An Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) A rural community, unincorporated town or village, or other public entity.

For the *Small Local Governments Compliance Assistance Policy* EPA proposes a more restrictive definition because it is the Agency's intention to focus the benefits of the policy on small units of general purpose local government. It is EPA's belief that special districts and governmental entities comprised of more than one participating governmental unit are created specifically for the purpose of ensuring that the resulting governmental unit has the technical, managerial, and financial capacity to discharge its responsibilities. EPA also believes single-medium compliance assistance programs or compliance assistance efforts designed for that specific sector of the regulated community can best meet the needs of governmental entities created for the purpose of delivering one type of service (not general services) to the public.

EPA invites public comment on this proposed change to the definition of entities eligible to receive the full benefits of the *Small Local Governments Compliance Assistance Policy*, particularly to the extent the policy would now not apply either to unincorporated entities that provide municipal services, or to district government entities authorized by State statute to provide, not general services, but to perform a specific function (e.g., school, water, or power districts).

B. Proposed Revisions to the Population Cap

EPA's January 23, 2002 **Federal Register** notice sought comment on two specific questions related to the population cap: (1) Should the policy raise its current cap to allow participation of communities with more than 2,500 residents? and (2) should the population cap be replaced by a test of a community's capacity to address its environmental responsibilities?

Nine of the ten commenters addressed the population cap. All nine favored giving State programs flexibility to admit communities with more than 2,500 permanent residents. Four commenters supported raising the population cap to 10,000, both to be

consistent with some of the population-dependent provisions of the Safe Drinking Water Act (in which public water systems that serve more than 10,000 users are labeled "large") and because the commenters believe communities with populations of up to 10,000 often provide essential public services to a customer base too small to fund a full-time professional environmental staff. Three commenters indicated that while a population of 2,500 could serve as a reliable rule of thumb for determining which communities need compliance assistance, they recommended that States be given discretion to justify application of the policy to larger communities if those larger communities can be shown also to need compliance assistance.

None of the eight respondents who offered comments on capacity tests supported determining a community's eligibility for compliance assistance solely on the basis of a capacity test. Three commenters rejected capacity tests outright, as they believe small local governments lack the expertise and resources needed to gather the information that would be required by such tests, and States lack the resources needed to evaluate the large number of small local governments potentially eligible for assistance. Five commenters asserted that States should have the flexibility to use a capacity test as a means of determining if a community whose population exceeds the population cap should nonetheless be eligible for participation.

After considering these comments, EPA decided to propose a hybrid approach. The proposed revised policy establishes a two-tiered population cap. EPA will defer to the States' acceptance into their programs of local governments with up to 3,300 permanent residents without analysis demonstrating a lack of technical, managerial, or financial capacity on the part of the local government. The proposed revised policy also provides that States can apply a capacity test to justify the participation of a local government with more than 3,300 but no more than 10,000 permanent residents. As a practical matter, such an upper limit is necessary if EPA wishes to focus comprehensive compliance assistance resources on small local governments who most need it while encouraging larger municipalities to use their greater technical, managerial, and financial capacity to assume more responsibility for ensuring their environmental compliance. In proposing these population levels for the population cap and the upper population limit, EPA