

**Response to Public Comments on
EPA's Proposed Public Notification Rule
(64 *FR* 25964, May 13, 1999)**

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Introduction

The U.S. Environmental Protection Agency (EPA) proposed changes to its drinking water public notification (PN) regulations. The PN regulations apply to owners and operators of public water systems that fail to comply with the drinking water standards and related regulations under the Safe Drinking Water Act. EPA published its proposed PN regulation in the *Federal Register* on May 13, 1999 (64 *FR* 25964), and invited comment.

EPA received a total of 53 written comments on the proposed rule: 47 comments were submitted by the close of the public comment period on July 12, 1999, and another six comments were submitted after that date. The commenters represented a variety of interests. Most represented State agencies or associations (22 commenters), followed by water systems and associations (20 commenters). Other commenters included environmental/citizens groups (3 commenters), trade organizations (3 commenters), counties (1 commenter), individuals (2 commenters), and other organizations (2 commenters). The public commenters are listed below.

During the public comment period, EPA held four public meetings to take comment on the PN rule in May and June 1999, in Madison, WI, Washington, DC, Allentown, PA, and Phoenix, AZ. A total of 168 people attended these meetings; some provided comment on the proposed rule. In conjunction with each public meeting, EPA held meetings to obtain input on sample public notices of drinking water violations developed using the draft *Public Notification Handbook*. Some comments from these meetings relate to the proposed rule.

Commenters on EPA's Proposed Public Notification Rule

- 1.01 Mike Mecke
- 1.02 Oklahoma DEQ
- 1.03 Dave Van Fleet
- 1.04 Indiana DEM
- 1.05 City of Anaheim, Public Utilities Department
- 1.06 Washington State Department of Health, Division of Drinking Water
- 1.07 Des Moines Water Works
- 1.08 Massachusetts DEP
- 1.09 Coalition for Health, Environment and Economic Rights, et al.
- 1.10 Commission of Public Works, City of Spartanburg, SC
- 1.11 Consumer Federation of America
- 1.12 Bridgeport (CT) Hydraulic Company
- 1.13 Missouri Department of Natural Resources
- 1.14 American Water Works Association
- 1.15 City of Glendale (AZ), Department of Public Works
- 1.16 Association of California Water Agencies
- 1.17 Chemical Manufacturers Association
- 1.18 City of Phoenix, Water Services Department
- 1.19 Massachusetts Water Resources Authority

- 1.20 Oregon Health Division
- 1.21 Midwest Food Processors Association, Inc.
- 1.22 San Francisco Public Utilities Commission
- 1.23 Association of State Drinking Water Administrators
- 1.24 Natural Resources Defense Council
- 1.25 Pennsylvania DEP, Bureau of Water Supply Management
- 1.26 Metro Water District (Tucson, AZ)
- 1.27 Carroll County (MD) Health Department Bureau of Environmental Health
- 1.28 New Hampshire Department of Environmental Services
- 1.29 Virginia Department of Health
- 1.30 Iowa Department of Natural Resources
- 1.31 Utah DEQ, Division of Drinking Water
- 1.32 New Jersey DEP, Interagency Work Group on Infectious Disease and Drinking Water
- 1.33 Illinois EPA, Division of Public Water Supplies
- 1.34 Maryland Department of the Environment
- 1.35 Association of Metropolitan Water Agencies
- 1.36 New York Department of Health
- 1.37 Boston Water and Sewer Commission
- 1.38 Lehigh County (PA) Authority
- 1.39 City of Cleveland, Department of Public Utilities, Division of Water
- 1.40 Minnesota Department of Health
- 1.41 City of Chandler (AZ), Office of the City Attorney
- 1.42 American Dental Association
- 1.43 City of Madison
- 1.44 Des Moines Water Works
- 1.45 Illinois EPA
- 1.46 American Water Works Service Co., Inc.
- 1.47 Gilbert (AZ) Water Treatment Plant
- 2.1 University of Florida, Soil and Water Science Department
- 2.2 New Jersey Department of Health and Senior Services
- 2.3 Texas Natural Resource Conservation Commission
- 2.4 Akron (OH) Public Utilities Bureau
- 2.5 Alabama Department of Environmental Management
- 2.6 United States Postal Service
- E.1 Public Meeting on Proposed PN Rule and Handbook, Madison, WI, May 26, 1999
- E.2 Public Meeting on Proposed PN Rule and Handbook, Washington, DC, June 3, 1999
- E.3 Public Meeting on Proposed PN Rule and Handbook, Allentown, PA, June 8-9, 1999
- E.4 Public Meeting on Proposed PN Rule and Handbook, Phoenix, AZ, June 23-24, 1999
- E.5 Meetings to Test and Review of Sample Public Notices

Topic 1: General Comments

Mike Mecke (1.01): Follow-up testing and research results must also be made following violations and clearly explained to public within a short time period (30days [sic]).

Response: The PN rule does not address follow-up testing and research; EPA believes this comment is beyond the scope of PN as provided in SDWA section 1414. However, states may require systems to distribute additional public information.

Mike Mecke (1.01): Research, testing and public notification should be expanded to eventually include other water-borne pathogens (crypto, giardia, etc.), plus viruses and medications carried thru effluent. Recent European research has shown that significant amounts and types of human (animal too?) medications can be put back into our waterways through the release of sewage effluent. This then is picked up by aquatic biota and its end results are fairly vague now, but probably not beneficial. This all ends up in our bays and oceans as well in the end - our major food basket.

Response: EPA believes this comment is beyond the scope of the PN rulemaking. The PN rule requirements are triggered by violations of existing National Primary Drinking Water Regulations and other situations related to risk associated with drinking water.

Missouri Department of Natural Resources (1.13): It is important system operators not be pulled away from fixing the problem to distribute notices because a significant number of people do not heed the warning. A survey was done following a very serious boil water order. Thirty-two percent of households reported that someone consumed unboiled water. Reasons given included forgetting, not believing there was a problem and not understanding that the order included ice and water used in drinks. The next enclosure is an article from DNR's *Water and Wastewater Digest* encouraging systems to think ahead of time: If they ever had an acute violation, what methods would most be most efficient for them to perform and most effective at reaching customers.

Response: EPA agrees that public notification should not interfere too much with solving the violation. Two of EPA's objectives in revising the rule were to simplify the rule and reduce the burden on water systems. EPA intends that the revised rule will allow systems to focus on resolving their problems. EPA encourages systems to "think ahead" and work with their primacy agency prior to any emergency to determine the best way to inform affected consumers.

American Water Works Association (1.14): [I]t is unclear as to how the new format for this rule will be incorporated into the ongoing effort to reformat Sections 141 and 142 of the Code of Federal Regulations. This new format is quite a bit different than previous rules, and some

thought will need to be given as to how and where to fit this regulation into the reformatted regulations.

Response: The PN rule follows the “plain language” guidelines from President Clinton’s executive order of March, 1998, as all new requirements are required to do. EPA intends, at a future date, to issue a re-codification of Part 141.

City of Phoenix, Water Services Department (1.18): It is unclear whether there is a process to resolve disputes when a water system disagrees with the primacy agency decision on a public notification. We recommend that there be a process to resolve such disputes.

Response: EPA does not believe that a formalized dispute resolution process is needed or even appropriate. Any dispute resolution processes over PN requirements will be established, if at all, by the primacy agency.

Metro Water District (Tucson, AZ) (1.26): Is it appropriate to include potential fines to public water supplies as part of the notification language. This would appear helpful in letting the public know the significance, not only on health effects wise, but financially the potential end capabilities of a given water supply not able to meet water quality criteria because of the lack of funding.

Response: EPA does not agree that enforcement information should be included in the content of a public notice, which is focused on the safety of drinking water. EPA does not believe that these public notices should be the vehicle for providing other information that is available as part of the public communication surrounding state and federal enforcement actions.

American Water Works Service Co., Inc. (1.46): Public notification requirements have always been a nuisance, because by the time a notification is issued, the problem has usually long passed. Therefore PN has generally been a source of confusion to the public, because the notice is received and generally no action on the part of consumers is recommended. Congress believed that requiring such notice anyway, would enlist the support of rate payers to improve the water system. In actuality, the notice probably instills a lack of confidence in addition to the confusion mentioned earlier. Consequently, we are pleased with this proposed rule in that it eliminates most of the problems we have encountered.

Response: EPA appreciates the commenter’s support.

Bob McElmurry, Wisconsin State Lab of Hygiene (at Madison meeting) (E.1): Units used for radiological contaminants should be consistent. The MCL for beta radiation is in millirems/year rather than pCi/l, as is used for gross alpha and radium 226/228.

Response: EPA does not believe that the units used for presenting standard monitoring results should be specified in the PN rule. These units are specified as part of the regulations for each standard.

Richard Kolish, City of Baltimore Water Department (at DC meeting) (E.2): The requirements pose a large burden on systems who do not have adequate money and staff.

Response: Congress requires public notification and EPA believes that the cost of complying with the PN rule is justified in terms of the benefits of providing such information to persons served in order to protect their health. The revised PN rule significantly reduces the costs from those in the current PN rule.

Pete Mandeville, Pine Valley Water (at Phoenix meeting) (E.4): The proposed rule is an unfunded mandate. This is a big cost for a small system such as ours serving 120 people with lots of absentee landlords. Where should systems get the money to comply with the new requirements? The corporation commission will not allow a rate increase of even \$.25-\$.30 to cover the additional cost. When EPA makes a rule, it should go to the corporation commission and ask it for a 1 percent rate increase to cover the cost.

Response: Congress requires public notification and EPA believes that the cost of complying with the PN rule is justified in terms of the benefits of providing such information to persons served in order to protect their health. The revised PN rule significantly reduces the costs from those in the current PN rule.

Comments on EPA's Approach to the PN Rule

Dave Van Fleet (1.03): . . . [T]his seems to be a good common sense approach in revising the public notification rule.

Response: EPA appreciates the commenter's support.

Washington State Department of Health, Division of Drinking Water (1.06): Overall, we believe the Public Notification Rule revisions are an improvement over the current requirement and should lead to increased compliance as intended. The "plain language" question-and-answer format makes the regulation easier to read and follow. The flexibility afforded the primacy agencies, particularly with regard to the option of elevating lower tiers, allows the process to be tailored to fit local and individual PWS situations.

Response: EPA appreciates the commenter's support and has retained this approach in the final rule.

Massachusetts DEP (1.08): EPA has done an admirable job in writing the proposed Public Notification rule in a format that is friendlier to the regulated community. The question and

answer format, in addition to the use of more plain language, will allow water systems to determine the violation type and fulfill the public notice requirements efficiently.

Response: EPA appreciates the commenter's support and has retained this approach in the final rule.

Consumer Federation of America (1.11): CFA strongly supports the provisions in the 1996 Safe Drinking Water Act that strengthened consumers' ability to determine what is in their drinking water. It is a central principle of the consumer movement that consumers are entitled to receive product information, and to receive it in time to make informed decisions to protect their health and pocket book. Although the Consumer Confidence Report mandated by the 1996 law gives consumers valuable year-end drinking water information, it was not intended to provide timely warnings of potential health threats. The Public Notification Rule has been, and continues to be, necessary to warn consumers as soon as possible when a potential serious adverse health threat is posed by an excess of a contaminant in the drinking water or a loss of treatment effectiveness.

Response: EPA appreciates the commenter's support.

Bridgeport (CT) Hydraulic Company (1.12): We support the major provisions of the proposed rule and believe that it presents a reasonable and feasible approach to accomplishing notification of the public regarding water quality issues.

Response: EPA appreciates the commenter's support.

Missouri Department of Natural Resources (1.13): Missouri DNR concurs entirely with the principle that consumers have a right to know what's in their drinking water and that with effective public notice, ". . . consumers will be better able to make health decisions for themselves and their families" (from p. 25965 of the proposed rule). To some extent the proposed rule achieves this goal in reducing the time required for public notice to 24 hours for Tier I violations and requires immediate consultation with the primacy agency regarding how public notice will be done.

Response: EPA appreciates the commenter's support and has retained this approach in the final rule.

American Water Works Association (1.14): AWWA would like to commend EPA for the stakeholder effort that was used in the development of this proposed regulation and the associated handbook. The EPA should be commended for the herculean task of pulling together the widely varied views of the full spectrum of stakeholders within the framework of the proposed rule, by balancing flexibility with consistency and accountability.

Response: EPA appreciates the commenter's support.

Association of California Water Agencies (1.16): ACWA . . . appreciates EPA's effort to conduct the extensive stakeholder process for the development of this revised regulation.

Response: EPA appreciates the commenter's support.

Massachusetts Water Resources Authority (1.19): MWRA supports the proposed revisions and commends EPA for its efforts to address the objectives of the 1996 Amendments to the SDWA in these regulations, particularly EPA's efforts to streamline the requirements for public notification and coordinate this rule with the requirements of the Consumer Confidence Rule.

Response: EPA appreciates the commenter's support.

San Francisco Public Utilities Commission (1.22): Overall, the proposed Public Notification Rule presents an improved approach to quickly and clearly communicate potential health risks to the public when serious violations or water quality conditions occur. The rule also gives the PWS an avenue for communicating less serious water quality conditions or treatment problems in a way as to not create unnecessary panic or anxiety.

Response: EPA appreciates the commenter's support.

Association of State Drinking Water Administrators (1.23): In general, ASDWA is supportive of the approach taken to develop revisions to this important rule. ASDWA believes that the "plain language" format will make the Federal regulatory requirements more easily understood by both states and water systems. ASDWA also supports development of the Public Notification Handbook to provide tools, tips, and templates for systems to use as they implement the rule. ASDWA congratulates the Agency on eliminating or streamlining some of the more cumbersome and onerous requirements found in the current requirements for public notification while continuing to focus on the best methods for notification of public health threats.

Response: EPA appreciates the commenter's support.

Natural Resources Defense Council (1.24): We are pleased with the agency's prompt action on this integral part of the Safe Drinking Water Act. The Public Notification rule serves the unique purpose of warning all water consumers as soon as possible when a potential serious adverse health threat exists. Prompt, concise, and accurate information is essential to adequately protect public health.

Response: EPA appreciates the commenter's support.

New Hampshire Department of Environmental Services (1.28): We have reviewed the Proposed Public Notification Rule and in general are in agreement with many of the provisions and the overall format.

Response: EPA appreciates the commenter's support.

Maryland Department of the Environment (1.34): Maryland strongly supports the revisions to the existing public notification requirements for public drinking water systems. In coordination with the Consumer Confidence Report Rule, the proposed rule will provide the public with clearer information on their drinking water, and any possible risks related to contaminations, water quality standards, and treatment techniques.

Response: EPA appreciates the commenter's support.

Association of Metropolitan Water Agencies (1.35): AMWA would like to express appreciation and commend all those who worked on the proposed rule. It is evident that a great deal of thought and effort has gone into incorporating stakeholder input, and developing a rule that clearly focuses on the more serious violations.

Response: EPA appreciates the commenter's support.

Boston Water and Sewer Commission (1.37): The Boston Water and Sewer Commission has reviewed the proposed revisions to the Public Notification Rule. The Commission commends and supports the U.S. Environmental Protection Agency's efforts to ensure public safety when a drinking water violation occurs.

Response: EPA appreciates the commenter's support.

City of Chandler (AZ), Office of the City Attorney (1.41): The City of Chandler, Arizona (Chandler) supports the goal of providing accurate and timely information to consumers on issues relating to drinking water quality. Chandler also supports provisions intended to provide "immediate" notification to consumers regarding on-going water quality violations with the potential to have serious adverse effects on human health. As such, Chandler generally supports the broad goals of the proposed Public Notification Rule. Chandler does, however, have several comments relating to specific provisions included in the proposed rule and the implementation of the rule as proposed.

Response: EPA appreciates the commenter's support.

Comments on the PN Rule Preamble

Missouri Department of Natural Resources (1.13): Table A and the attendant discussion are highly misleading. To state "TWSs must comply only with existing national primary drinking water regulations where short-term violations may pose a health threat . . ." is only the tip of the iceberg of the monitoring reduction allowed TWSs under the NPDWRs. It needs to be clearly stated that even for the short-term violations, the federal monitoring requirement for TWSs are much more lax, allowing monitoring as infrequently as annually, leaving a huge vulnerability when pumps are replaced, etc. many months before the next sample for total coliform testing will be taken. The CDC/EPA report "Surveillance for Waterborne-Disease Outbreaks-United States, 1995-1996" published in December 1998, summary enclosed, shows noncommunity systems do

indeed have serious problems. Of the 11 groundwater systems linked to outbreaks, 8 were noncommunity systems. The public also has a right to know that volatile organic chemical testing will not routinely be performed at the PWSs most likely to be contaminated—gas stations, truck stops, and convenience stores.

Table A shows that nationally, a community system is much more likely to have a violation than a TWSs. For this table to have any validity, a column needs to be added listing the *potential* number of violations for each system type under the NPDWRS. In Missouri, TWSs are required to monitor for total coliform every month they dispense water to the public. In 1998 TWSs in Missouri accounted for 38 percent of all systems in the state, but had 48 percent of the MCL violations for total coliform bacteria, 65 percent of the acute violations for fecal coliform or E coli, and 58 percent of major monitoring violations (Annual Compliance Report enclosed). DNR feels statistics would be similar nationally if the NPDWRS required monthly testing for total coliform at TWSs. Missouri is ahead of the pack in finding these TWSs with major bacteriological problems.

This issue is particularly vital with regard to vulnerable subpopulations. This group must be educated to "know before they go," be it domestic or foreign travel. The last thing an immunocompromised person needs is to get feeling just well enough to go on vacation to a remote TWS that has not tested for total coliform in 10 months and to come home with a waterborne illness. It is a misplaced priority that a community system with no violations whatsoever is required to make mention of bottled water in their CCR while EPA draws no national focus to low national drinking water standards at TWSs. . . .

The average cost of the public notice rule per primacy agency of \$27,944 is low. Missouri has one FTE with the working title of public notice coordinator, with salary, benefits, and overhead costing approximately \$50,000. Other staff at the regional office level also spend time on public notice, particularly with respect to Tier 1 violations. Costs are easily more than twice what EPA has indicated.

Response: EPA disagrees that Table A should present the number of potential violations. EPA has based its cost analyses for the PN rule on the most recent numbers of violations available from EPA's SDWIS data base. Estimates of the number of potential violations would be based on state- or situation-specific circumstances, and EPA cannot adequately account for all of these in a national-level analysis (such an analysis would be beyond the scope of what is required). EPA also believes that the cost to primacy agencies is accurate. EPA estimates the cost of meeting the federal requirements—that is what each state must do to oversee a program that meets EPA's requirements. In the cost analysis for the final rule information collection request, EPA has added the cost of revising the states's primacy package to the cost calculations.

Regarding the commenter's point about visitors to transient water systems being unaware of violations, the rule requires that notices of these violations be posted so that they are

visible to all users of the system. EPA also wishes to point out that issues related to the adequacy of regulatory requirements for TWSs and what constitutes a monitoring violation are beyond the scope of the PN rule.

American Water Works Association (1.14): AWWA recommends that the costs for the public notification requirements under the Stage I Disinfectants/Disinfection By Products Rule (D/DBPR) and the Interim Enhanced Surface Water Treatment Rule (IESWTR) be included in the final public notification regulation. The effective dates of these two regulations and the final public notification regulation are actually almost the same. The Stage I D/DBPR & IESWTR is effective for large systems in December, 2001 (small systems in December, 2003) and the effective date for the final public notification will likely be December, 2001 (assuming promulgation in December, 1999 and effective date two years after that). Additionally, the notification triggers, such as the chlorine dioxide MRDL, are already included in the proposed regulation. Therefore, the costs should also be included.

EPA should make some reasonable assumptions as to how many systems will be required to go to public notification based on the myriad of requirements of these proposed regulations. EPA should estimate an initial compliance percentage for these requirements, and assume that the balance will have to go to public notification. EPA should then use the same cost information to develop costs for these notifications, and then add these costs to the costs of all the other public notifications. These two regulations are probably the most complex regulations ever promulgated by EPA, and there will likely be a large number of public notifications required.

Response: EPA agrees with the commenter on including in its final cost estimates the burden and cost for PN under the D/DBPR and IESWTR. The ICR for the final rule includes these estimates.

City of Phoenix, Water Services Department (1.18): [On] page 25972, Section 1, the text refers to "New Disinfection By-Products (DBP)". We believe the text is referring to the Stage I D/DBP rule. We recommend that the exact name of the rule be used.

Response: EPA agrees. The preamble text for the final rule has been amended accordingly.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania appreciates the side-by-side comparison between the existing and proposed PN rules.

Response: EPA appreciates the commenter's support.

Iowa Department of Natural Resources (1.30): In section I of the preamble, it states that there is no deadline for the promulgation of the public notice rules, but EPA intends to complete the rulemaking by the end of 1999 so that the states and regulated community can coordinate public notice implementation with implementation of the CCR. Since the final CCR rule was promulgated 18 months prior to the anticipated promulgation date of this rule (therefore final

CCR state rules are required by August 2000, and final public notice state rules are required by December 2001), it is not quite as easy to conduct this coordinated effort as it is made to appear here. In Iowa, the final CCR rules are scheduled for submission to our Environmental Protection Commission for final adoption this month, and implementation has been underway for several months. The first CCR is due from all CWS by October 19, 1999, and several have already been received by our department.

Response: EPA agrees that bundling the PN and CCR primacy requirements into one package poses difficulties. However, where the state finds this to be a more efficient approach, EPA will work to support such efforts. EPA is moving to promulgate the final rule as quickly as possible to give states the opportunity to bundle the requirements.

Maryland Department of the Environment (1.34): The regulations are written primarily for community water systems. State flexibility should be provided the various categories of systems.

Response: EPA disagrees that the PN regulation is written for community water systems. Where distinctions for CWS and NCWS are appropriate, such as in the form and manner of a public notice, EPA specifies different requirements to accommodate differing situations.

Association of Metropolitan Water Agencies (1.35): The proposal discusses the consumer right-to-know provisions of the Safe Drinking Water Act but omits the most important one - the Health Risk Reduction and Cost Analysis (HRRCA) provision. This provision provides the public with key information on what risk reduction they might expect from a given regulation and what they will be asked to pay to receive that reduction in risk. The HRRCA requirement should be added to the preamble discussion of public right-to-know provisions.

Response: EPA agrees that the HRRCA provision is an important right-to-know provision and should be included in discussions of the right-to-know provisions of the 1996 SDWA Amendments.

Comments on Consistency of the PN Rule with the CCR Rule

Indiana DEM (1.04): In any instance where the same information (and corresponding rule language) can be used in both the Public Notification rule and the Consumer Confidence Report rule it should be used. This will allow for less confusion when implementing the consumer right-to-know objectives.

Response: EPA agrees with the comment. The Agency is encouraging systems to coordinate CCRs and PNs, so long as the PN content requirements are met. Where possible, EPA has mirrored CCR standard elements in the PN requirements. For example, health effects language is the same under both rules.

There are elements which differ, however, to account for the differing messages of a public notice of a drinking water violation and a CCR.

Massachusetts DEP (1.08): Although some of the requirements of a public notice overlap with the requirements of the Consumer Confidence Report (CCR) rule, this information won't be repetitive to consumers. Public notices provide information on a more timely basis as opposed to a CCR which will provide consumers with general water quality information in addition to violations on an annual basis. The CCR will complement public notices in providing consumers with more information about their drinking water allowing consumers to make informed choices about the use of their drinking water.

Response: EPA agrees with the comment.

City of Phoenix, Water Services Department (1.18): The proposed rule does a good job of interfacing public notification documents with the Consumer Confidence Report.

Response: EPA appreciates the comment.

Oregon Health Division (1.20): **It is extremely important for the PNR to be compatible with the CCR**, especially with consistent health effects language, and using the CCR to meet public notice requirements wherever applicable, such as; Tier 3 notices, unregulated contaminants, and annual repeat notices.

Response: EPA agrees with the comment.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania supports EPA's proposal to align the PN Rule requirements with parallel requirements in the CCR rule.

Response: EPA appreciates the comment.

Comments on Notices of Return to Compliance

Carroll County (MD) Health Department Bureau of Environmental Health (1.27): EPA recommends that a supplemental notice be distributed once an emergency situation has been corrected. This would apparently apply under tier 1 circumstances. Will this be a formal requirement?

Response: EPA 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. EPA does not require this closure notice because such notices are not required under the SDWA Amendments. Furthermore, closure notices are not appropriate in every situation. The *Public Notification Handbook*

and primacy agency implementation guidance will continue to recommend such notices.

City of Chandler (AZ) Office of the City Attorney (1.41): Why are there no specific standards or provisions in the proposed rule regarding notice to the public of the cessation of the situation that created the potential serious adverse effect on human health? This would, presumably, be covered in a (more detailed) section dealing with "additional notice".

Response: EPA 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 *Public Notification Handbook* and primacy agency implementation guidance will continue to recommend such notices.

Massachusetts DEP (1.08): A follow-up posting will provide the public with a clearer picture of what the violation was, how it occurred, and any details concluded after the original notice was posted.

Response: EPA 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 *Public Notification Handbook* and primacy agency implementation guidance will continue to recommend such notices.

Renee Hall, Virginia Department of Health (at DC meeting) (E.2): Perhaps there could be a notice that a system has returned to compliance.

Response: EPA 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. EPA does not require this closure notice because such notices are not required under the SDWA Amendments. Furthermore, closure notices are not appropriate in every situation. The *Public Notification Handbook* and primacy agency implementation guidance will continue to recommend such notices.

141.201 General Public Notification Requirements

EPA is proposing that the revised public notification rule become effective no later than two years after the final rule is published in the Federal Register or on the date the primacy agency's revised regulation becomes effective, whichever comes first. . .Because the intent is still to replace the current regulation with the new streamlined rule as soon as possible, comments are requested on the proposed effective date. Suggestions on other options to put the new regulations into effect sooner are welcome. (64 FR 25968)

EPA is proposing a new "plain language" format for the revised public notification regulation, consistent with the requirements outlined in the June 1, 1998 memorandum sent by President Clinton to all Federal agencies and the ongoing Agency initiative to take steps to improve both the clarity and comprehension of regulatory language. [There is no specific request for comment on this issue.] (64 FR 25971)

Comments:

Indiana DEM (1.04): The format of the rule will be much easier for the general public and the water systems to understand, however, it will be difficult to transfer into the format required for most state regulations. We would need to work closely with U.S. EPA, either at the regional or national level to be sure that the regulation that we adopt is at least as stringent as the federal rule.

Response: EPA recognizes the potential problems some states may have in transferring the format of the final rule into the format of their existing state regulations. This will be an issue to be addressed with the EPA region as the state moves to adopt the PN regulations during primacy revision.

Commission of Public Works, City of Spartanburg, SC (1.10): SWS applauds EPA's efforts to present this proposed regulation in a clear and readily understandable format. This represents a substantial improvement over past presentations. The use of summary tables, in particular, is very helpful. SWS recommends that EPA continue its efforts to present regulations in a clearer format, as this can only improve compliance. As an additional step, SWS recommends that EPA attempt, wherever reasonably possible, to avoid the use of lengthy cross-references (for example referring to paragraph (b)(1)(ii)(A)(4)(iii)etc).

Response: EPA agrees with the comment and has tried to avoid use of lengthy cross-references in the final rule.

Missouri Department of Natural Resources (1.13): The question and answer format is an improvement.

Response: EPA appreciates the comment and has retained this approach in the final rule.

Association of State Drinking Water Administrators (1.23): ASDWA concurs that states should have two years to adopt their own public notification regulations as allowed in the law. This permits an orderly drafting, promulgation, implementation, and enforcement process within state programs.

Response: EPA appreciates the comment and has retained this approach in the final rule.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania agrees with EPA's proposal to make the revised public notification ("PN") rule effective no later than two years after the final rule is published. Based on our regulatory approval process, we would find it difficult to comply with a shorter time frame.

Response: EPA appreciates the comment and has retained this approach in the final rule.

Virginia Department of Health (1.29): Two years following the final rule is a reasonable date for implementation. This allows time for water systems to be informed of the new requirements. If in fact the new requirements are simpler and more efficient than the existing requirements, as EPA contends, then states and waterworks can use appropriate provisions of the new rule immediately while still satisfying the old rule. . . .

The question and answer format does seem to help make the rule more easily understood. However, there are other factors, such as print size, outlining format, and legalistic language that have always made federal regulations difficult to read and understand.

Response: EPA has retained the two-year time frame and format, as suggested by the commenter.

Association of Metropolitan Water Agencies (1.35): AMWA agrees that the effective dates for the rule as outlined in the proposal are appropriate and the best solution for replacing the current regulation as soon as possible.

Response: The final rule maintains the proposed effective date for systems in states with primacy.

Topic 2: 141.201 (a) Who must give public notice?

EPA is asking for comment on the proposed addition of explicit regulatory language enabling the primacy agency (including EPA in its regulations) to require public notification for other situations it believes have the potential for serious health risk. EPA is also asking 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 promulgated. (64 FR 25972)

Comments:

Des Moines Water Works (1.07): DMWW supports the use of [sic] table format to delineate situations requiring public notification. A table will also centralize the location of the data and reduce confusion.

Response: EPA has retained this approach in the final rule.

Massachusetts DEP (1.08): The question and answer format, in addition to the use of more plain language, will allow water systems to determine the violation type and fulfill the public notice requirements efficiently.

Response: EPA has retained this approach in the final rule.

Coalition for Health, Environment and Economic Rights, et al. (1.09): Enforcement agency flexibility to move Tier 3 treatment technology violations to Tier 2 or Tier 1. Clearly when such violations are serious or persistent, greater than annual notification would do wonders to clear them up rapidly, thus protecting public health. State agencies, always being short on resources and time, can always ignore this option, but OW should not deprive them of the opportunity to seek partners (the public, via the RTK) in compliance with drinking water regulations, so critical to our health.

Response: EPA agrees and has retained this flexibility in the final rule.

Missouri Department of Natural Resources (1.13): The addition of explicit regulatory language enabling the primacy agency to require PN for other situations that have the potential for serious health risk is needed, so time is not lost, when these usually unforeseen situations occur. Also the tabular form for Appendix A, etc. seems fine.

Response: EPA has retained this approach in the final rule.

American Water Works Association (1.14): In general, AWWA finds that the new format for the regulatory language is easier to understand than previous rules. The tables included are adequate for a utility to understand what has to be done to comply with this regulation. . . .

AWWA supports the flexibility for primacy agencies (including EPA in direct implementation) to require public notification for other serious health risks. It is nearly impossible to predict every situation where public notification would be needed. A hypothetical public notification regulation that legally mandated notification for every possible scenario would not have adequate flexibility that is needed to run a drinking water program. AWWA supports EPA's plans to update Appendix A as new regulations are promulgated.

Response: EPA has retained this flexibility and the plain language format in the final rule.

City of Phoenix, Water Services Department (1.18): The added flexibility may add more work to be done by the primacy agency. This may result in overloading primacy agencies with work. For example, the rule requires the water system and the primacy agency to negotiate and decide on the best way to issue a public notice. We believe that additional funds/resources must be allocated by Congress or Legislature to help primacy agencies handle the additional public notification work. . . .

The rule provides flexibility in handling the public notification process. This is a very positive change and should result in better service to the community. Overall the format (question and answer) of the Public Notice Rule is easy to follow and understand. The breakdown of the Tiers and Appendix A makes it easy for the water systems to determine what Tier the violation is in.

Response: EPA disagrees that the flexibility for primacy agencies to tailor the notice to fit the situation will result in overloading primacy agencies. First, states are not required to exercise this flexibility if they are otherwise constrained. Second, the rule only requires consultation for Tier 1 situations and for certain violations of limits for turbidity, which are a very small percentage of all violations. Finally, EPA's rule is self-implementing; no direction from the state is required to comply with the rule. EPA appreciates the commenter's support of the format of the rule and has retained this format in the final rule.

Oregon Health Division (1.20): This seems like a good idea to give States flexibility to address specific situations that may not be identified in the Rule. . . [The tabular form is a g]ood idea for easy reference, and can be updated as new rules are promulgated.

Response: EPA appreciates the commenter's support and has retained these aspects of the rule.

Association of State Drinking Water Administrators (1.23): ASDWA supports the provision that states (primacy agencies) have the flexibility to require public notification for other situations that may have potentially serious health risks. ASDWA also appreciates the use of a tabular format (Appendix A) and the proposal that it be updated as new regulations are developed and promulgated. . . .

ASDWA asks that the regulatory language clearly indicate that states have the flexibility to modify the reporting time frames to be uniformly more stringent as well as to consider elevation of the tier reporting requirements on a case-by-case basis.

Response: EPA appreciates the commenter's support. EPA agrees with the commenter and intends that states have the flexibility to modify reporting time frames to be more stringent, as well as consider elevating violations to higher tiers on a case-by-case basis. The rule clearly indicates in many places where the state may modify the baseline rule. Where the state opts to take advantage of the flexibility, EPA requires that the state address this in their primacy revision application. States, of course, always retain their authority to implement more stringent rules than this one.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania finds that Appendix A's format is acceptable and updating it for new rules is proper. However, the designation of a violation as a specific tier in the table presents a problem for states that cannot be more stringent than EPA and want to elevate a lower tier violation to a higher level. In addition, it is strongly recommended that the violations or situations that may subsequently identified as needing public notice due to the potential for serious health risk should not be added to Appendix A. Such situations should be handled as emergencies based on the case specific information.

Response: EPA intends that by providing explicit authority in the federal rule for primacy agencies to elevate any violation or situation to Tier 1 based on the potential for serious health effects as a result of short term exposure, states may elevate a specific violation from the tier assigned in Appendix A, since this is part of the regulation and not a stringency issue. EPA does not agree that it should remove the tier-level assignment from Appendix A. EPA is assuming that violations or situations that the primacy agency determines will require Tier 1 notice due to potential for health effects probably *will* be determined on a case by case basis and handled as emergencies by the primacy agency and system. EPA feels that listing this general category in Appendix A does not limit the primacy agency's ability to treat a situation as an emergency.

New Hampshire Department of Environmental Services (1.28): We agree that the States should have flexibility in requiring public notice for other situations, not already covered by the rule, which could have the potential for a serious health risk. Also, we feel that Appendix A is a very useful guide to obtain necessary information quickly. Updating this appendix with the passage of new rules would be very helpful in keeping all information in one area.

Response: EPA has retained these aspects of the proposal in the final rule.

Virginia Department of Health (1.29): The table listing of all situations requiring PN is a definite improvement over searching through the various sections for the same information. We support the proposal to regularly update Appendix A as new rules are promulgated.

Response: EPA has retained this table in the final rule.

Utah DEQ, Division of Drinking Water (1.31): The language in paragraph (5) of Table 1 to § 141.202. appears appropriate. The language is general in nature and allows the states the flexibility to deal effectively with each individual circumstance.

Response: EPA has retained this language in the final rule.

Topic 3: 141.201 (b) What type of public notice is required for each violation or situation?

EPA requests comment on whether the 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. (64 FR 25973)

Comments:

Oklahoma DEQ (1.02): This tiered approach appears to be a reasonable method to provide public notice for violations with different levels of severity.

Response: EPA has retained this approach in the final rule.

Dave Van Fleet (1.03): I support the use of the tier 1, 2, and 3 levels for public notices and the varying notice time frames associated with each tier. It is logical to separate tier 1, potential for serious adverse human health effects from the tier 3, for administrative or other non-serious situations.

Response: EPA has retained this approach in the final rule.

Indiana DEM (1.04): The proposed three-tiered structure is appropriate. There are some minor violations in which notification on an annual basis (possibly as part of the Consumer Confidence Report for community water systems) is appropriate.

Response: EPA has retained this approach in the final rule.

Des Moines Water Works (1.07): DMWW believes that a three-tiered structure is suitable for delineating violation levels. A three-tiered structure will offer a public water system a comprehensive distinction between violations - from those having immediate adverse health effects, those having potential serious adverse health effects, and violations with no immediate adverse health effects.

Response: EPA has retained this approach in the final rule.

Coalition for Health, Environment and Economic Rights, et al. (1.09): We also basically support EPA's 3-tiered approach to the frequency and content of notification of violations--no one can dispute the need to notify the public immediately of acute threats to drinking water.

Response: EPA has retained this approach in the final rule.

Bridgeport (CT) Hydraulic Company (1.12): We support the Three-Tier notification structure (page 25973).

Response: EPA has retained this approach in the final rule.

Missouri Department of Natural Resources (1.13): The 3-tiered approach structure is preferable to 2-tiers.

Response: EPA has retained this approach in the final rule.

American Water Works Association (1.14): AWWA supports the three-tier structure over a two-tier structure. Administrative and technical violations, such as late submission of monitoring data, should be a completely separate tier from health violations. The "middle-tier" is the most appropriate notification mechanism between 24-hour notice and annual notice.

Response: EPA has retained this approach in the final rule.

City of Phoenix, Water Services Department (1.18): The 3-tier approach to public notice is good. It prioritizes problems based on the severity of the violations. The tier 2 and 3 notifications should start out as tier 3 and be raised to tier 2 by the State Department of Environmental Quality if they feel that is necessary.

Response: EPA has retained the three tier framework in the final rule. EPA believes that some notices belong in Tier 2. Notice of MCL violations, for example, should occur in less than one year. EPA acknowledges that some Tier 2 violations are not serious enough to warrant 30 day notice, and for this reason gives primacy agencies limited discretion to extend the deadline for Tier 2 notices up to 90 days.

Oregon Health Division (1.20): The three tiered structure is appropriate. One advantage is that tier 3 violations can be dealt with through the annual CCR for community system, or other annual notice.

Response: EPA has retained this approach in the final rule.

Association of State Drinking Water Administrators (1.23): ASDWA firmly supports the use of a three tier versus a two tier structure for public notification and concurs with the regulatory intent to delineate between those violations not directly related to health risks and those that are.

Response: EPA has retained this approach in the final rule.

Natural Resources Defense Council (1.24): We are pleased that the agency has chosen to proceed with a three tiered approach. The agency has proposed a three-tiered approach which we feel adequately serves the purpose and spirit of the public notification rule by differentiating between the seriousness of situations in which notice is required and specifying the required form, manner, content, and frequency of the notice to be provided.

Response: EPA has retained this approach in the final rule.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania recommends that a three-tiered structure be used, notwithstanding the possible inability for some states to be more stringent than EPA and not be able as presently proposed to elevate a Tier 3 violation to Tier 2.

Response: EPA has retained this approach in the final rule. EPA intends that by providing explicit authority in the federal rule for primacy agencies to elevate any violation or situation to Tier 1 based on the potential for serious health effects as a result of short term exposure, states may elevate a specific violation from the tier assigned in Appendix A, since this is part of the regulation and not a stringency issue.

Metro Water District (Tucson, AZ) (1.26): TWO TIER ALTERNATIVE. . . Strongly agree with this approach. It allows much needed flexibility and more cohesive dialogs with States or the primacy agencies.

Response: EPA has decided to retain the three-tier approach. EPA feels that this approach is the most appropriate structure for the rule. These 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.

Carroll County (MD) Health Department Bureau of Environmental Health (1.27): A 2-tier system would be simpler, especially since simplicity is the key to more effective public notification. Tiers 1 and 2 basically differ on time allotted for notification. Other than that they seem similar. They should be combined into one classification?

Response: EPA has decided to retain the three-tier approach. EPA feels that this approach is the most appropriate structure for the rule. These violations span a wide range of potential health risks. Although a two-tier approach would make the PN rule simpler, it would be more difficult for states to implement if they had to distinguish between 24-hour and annual notice. 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.

Virginia Department of Health (1.29): We support the three tiered structure since the nature and seriousness of the different violations seem to fit reasonably well into three categories. A two-tier structure, while apparently giving a state more flexibility, would probably be more complicated to administer since it would likely result in three or four or more PN categories in actual practice.

Response: EPA has retained the three tier framework in the final rule.

Association of Metropolitan Water Agencies (1.35): AMWA agrees with EPA that the three-tier system as proposed better meets the public notification objectives than the two-tiered alternatives studied.

Response: EPA appreciates the commenter's support for its proposal.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): CWD believes that a two-tiered structure would be more appropriate. Customers will probably not understand the nuances of when they receive the notification. Violations that have the potential to result in an immediate danger to public health from acute exposure should result in immediate notification of the public. For all other violations, the Consumer Confidence Report should be used to inform customers about the problem. This would be less confusing for the customers, water systems, and primacy agencies.

Response: EPA has decided to retain the three-tier approach. EPA feels that this approach is the most appropriate structure for the rule. These violations span a wide range of potential health risks. Although a two-tier approach would make the PN rule simpler, it would be more difficult for states to implement if they had to distinguish between 24-hour and annual notice. 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.

American Dental Association (1.42): The Association supports the concept of a three-tiered public notice system.

Response: EPA has retained this approach in the final rule.

American Water Works Service Co., Inc. (1.46): We agree with the three Tiered approach, gearing a notice and timing of said notice to the severity of the violation.

Response: EPA has retained this approach in the final rule.

Topic 4: 141.201 (c) Who must be notified?

The SDWA requires that public notice be provided to “the persons served by the system.” (SDWA, Section 1414(c)(1)). Reaching the persons served may pose a challenge to some water systems. . . The proposed rule will require water systems to provide the notice in a form and manner that is reasonably calculated to get the information to all persons served in the required time period. . . [There is no specific request for comment on this issue.] (64 FR 25973)

Comments:

Dave Van Fleet (1.03): The word "served" should be replaced with the word "affected." The paragraph should read,

"Who must be notified? Each public water system must provide public notice to persons ~~served~~ affected by the water system,. . .

This change would allow large water systems to properly notify a smaller segment of their systems without undo alarm to their customers not affected by a particular incident. The wording "served" states to me that they would be required to notify all customers of their system even if the problem was with one of multiple supply sources.

Response: EPA disagrees with changing the baseline requirement to distribute notices of all violations system-wide, because EPA believes strongly 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 elevated contaminant levels 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 could be 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.

Commission of Public Works, City of Spartanburg, SC (1.10): Some types of MCL exceedances do not affect the entire water system. Bacteriological contamination, for example, is often quite localized within the distribution system. There is little benefit to notifying and alarming all system consumers for a clearly localized problem. SWS recommends inclusion of provisions for localized notices, issued only to consumers within the reasonably affected area(s), in the Public Notification Rule.

Response: EPA added language to the final rule enabling the primacy agency to grant exceptions to the distribution requirement where the violation is clearly contained to a portion of the water system. The final rule states, “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.” To meet EPA’s criteria 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 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 be part of the design of the distribution system (e.g., pressure zones, backflow prevention devices) or be created through system operation (e.g., flow control). This could be the case in the commenter’s example. If fecal coliform is found only in a collection of street laterals and distribution mains which supply water for local use to several blocks, with no water flow back to the rest of the distribution system, such limited distribution may be appropriate. The decision of whether to permit an exception to the system-wide notice requirement is solely the primacy agency’s.

City of Glendale (AZ), Department of Public Works (1.15): The proposed rule requires that public notice be provided to all persons served by the water system. This is a significant change to current Arizona regulation that allows for public notice to be given to only that portion of the population affected by the event.

We agree that all customers receiving drinking water that exceed the MCL (for contaminants that can cause acute health effects) should be notified as soon as practicable. We disagree that all water customers served by the water system need to be notified as soon as practicable, particularly where the water system can demonstrate that only a segment of the population served by the system is likely to be exposed to the water quality problem. In some instances, the water system can show that sufficient blending is occurring in the distribution system. In other instances the affected area (i.e., service area receiving the contaminated water) can be reasonably determined. Customers deemed to have a reasonable chance of receiving drinking water that exceed the MCL (for selected contaminants) should be notified using the Tier I process. Customers determined not to have a reasonable chance of receiving water that violates the MCL should be allowed to be notified using the Tier 3 public notification process.

For example, consider a drinking water system serving 55 million gallons of water per day. The average nitrate concentration in the system is 2 mg/L. The system turns on one well that has a nitrate concentration of 12 mg/L. The well produces 2 million gallons of water per day. The concentration of nitrate in the system will increase to 2.35 mg/L. Only small portion of the total service population, those located close to the well, have a potential of receiving water in which

the nitrate MCL is exceeded. The potentially affected consumers should receive a Tier 1 notification, while the general service population should receive a Tier 3 notification. . . .

Allowing the water system to limit Tier 1 notification to the affected segment of the service population would greatly enhance the water system's ability to ensure that notices are delivered within 24 hours.

Response: EPA added language to the final rule enabling the primacy agency to grant exceptions to the distribution requirement where the violation is clearly contained to a portion of the water system. The final rule states, “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.” To meet EPA’s criteria 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 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 be part of the design of the distribution system (e.g., pressure zones, backflow prevention devices) or be created through system operation (e.g., flow control). In the commenter’s example, the water system 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 a single distribution main because of water flow patterns and pressure zones. EPA notes that such a determination would require a significant amount of data, and the rule is much more restricted than limiting notice to an area that is “reasonably determined” to be affected, as the commenter suggests.

EPA disagrees with the commenter’s suggestion that potentially affected consumers should receive a Tier 1 notification, while the general service population receives Tier 3 notification. Nothing in the rule language allows Tier 1 notice to be provided to some consumers and Tier 3 notice provided for others. A water system must provide either full Tier 1 notice or limited Tier 1 notice. The decision of whether to permit an exception to the system-wide notice requirement is solely the primacy agency’s. Violations of EPA drinking water standards are *always* recorded as system-wide violations, even where there is evidence that only a portion of the persons served by the system are affected. Therefore, the violation would appear in the system’s CCR for the year. Regarding the commenter’s claim that Arizona regulations allow for public notice to be given to only that portion of the population affected by the event, EPA responds that allowing the system to provide notice to only the people affected is less stringent than the current rule.

Association of California Water Agencies (1.16): There is confusion in the rule over who is to notify consumers of a water quality concern. Language in the preamble implies that it is the public water system's responsibility to reach "tenants, residents, patients, students or employees." The rule, though, states that it is the responsibility of the public water system to notify persons served by the water system (to include "residential, transient and nontransient users") and then those customers should reach "tenants, residents, patients, students or employees". . . Public water systems should be encouraged to reach as many consumers as possible, but this should not be required.

Response: EPA originally intended that "persons served" mean everyone in the system. EPA added language to the final rule enabling the primacy agency to grant exceptions to the distribution requirement where the violation is clearly contained to a portion of the water system. The final rule states, "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." Violations of EPA drinking water standards are *always* recorded as system-wide violations, even where there is evidence that only a portion of the persons served by the system are affected by any particular violation. EPA believes that all public water system consumers have a right to know when the water system providing their drinking water has a violation.

City of Phoenix, Water Services Department (1.18): EPA should clarify if "persons served" means everyone in the system that had the violation or just the persons affected by the risk of the violation.

Response: 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 Section 1414(c)(1) of the SDWA, which requires that public notice be provided to "the persons served by the system." However, in response to comments on the proposed rule, EPA has added language under §141.201(c)(2) 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 the notice distribution to only 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.

Association of Metropolitan Water Agencies (1.35): Secondly, the rule needs to be very clear on what "public" needs to be notified. The rule consistently speaks to notification of "all persons served by the water system." However, in many cases, only a portion of those served by a system are impacted by a violation. This is particularly true of total coliform violations with indications of fecal contamination. Such violations, particularly in larger systems, are typically isolated to a portion of the distribution system. Being mindful that pressure zones can be hydraulically independent or may be valved off in the case of contamination, notification in such instances should be targeted to the affected population. This is particularly important where boil water notices are involved. It would be inappropriate for notification to apply to persons not potentially affected by an incident. This point needs to be discussed in the preamble to the final rule, and the rule language adjusted appropriately.

Response: EPA agrees with the commenter that limited distribution is appropriate in those situations where the risk is absolutely limited to a portion of the distribution system. Accordingly, EPA has chosen to allow exceptions (at the primacy agency's discretion) when the water system is able to demonstrate, with a high degree of certainty, that the contaminant of concern is either physically or hydraulically isolated to a portion of the distribution system. EPA emphasizes that specific criteria must be met to justify limited distribution, and open-ended judgements by the primacy agency are not allowed. The final rule states, "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."

City of Cleveland, Department of Public Utilities, Division of Water (1.39): Only those customers affected by the violation should be required to receive the results, not all customers of the water system. The problem could originate in the distribution system and only affect a localized area.

Response: EPA agrees with the commenter that limited distribution is appropriate in those situations where the risk is absolutely limited to a portion of the distribution system. Accordingly, EPA has chosen to allow exceptions (at the primacy agency's discretion) when the water system is able to demonstrate, with a high degree of certainty, that the contaminant of concern is either physically or hydraulically isolated to a portion of the distribution system. EPA emphasizes that specific criteria must be met to justify limited distribution, and open-ended judgements by the primacy agency are not allowed. The final rule states, "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."

City of Chandler (AZ), Office of the City Attorney (1.41): If a particular violation (monitoring or water quality) is isolated to a small portion of a public water system's distribution system, why shouldn't a Tier 1, Tier 2, and 141.208 notice be limited to those persons impacted by the violation? Currently, notices are required to be provided to all persons served by the system, even if most of those persons are not impacted.

Response: EPA agrees with the commenter that limited distribution is appropriate in those situations where the risk is absolutely limited to a portion of the distribution system. Accordingly, EPA has chosen to allow exceptions (at the primacy agency's discretion) when the water system is able to demonstrate, with a high degree of certainty, that the contaminant of concern is either physically or hydraulically isolated to a portion of the distribution system. EPA emphasizes that specific criteria must be met to justify limited distribution, and open-ended judgements by the primacy agency are not allowed. The final rule states, "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."

City of Madison (1.43): I am also concerned about language throughout the proposed Rule that says notice must be served to "persons served by the water system." In many water systems, particularly larger ones, there may be multiple sources of supply and multiple pressure zones that are essentially hydraulically independent from one another. Many systems would have the capability of isolating a contaminant within an identifiable, limited area of their distribution systems. In cases such as this, it would be important to notify all persons potentially affected by the contamination. It should not be necessary to notify persons served by the system who have no possibility of being affected by the violation. Such notification would serve no productive purpose and could be detrimental in terms of raising false fears among the public. If false fears are raised in one incident, a subsequent valid notification may not be taken seriously.

Response: EPA agrees with the commenter that, where it is possible to identify portions of the distribution system that are hydraulically independent from one another, limited distribution of a public notice would be appropriate. In particular, EPA agrees that people who have no possibility of being affected by a violation do not need to receive a notice. However, if there is any chance that people in a portion of the distribution system could be affected, they must receive a notice. Accordingly, EPA has chosen to allow exceptions (at the primacy agency's discretion) when the water system is able to demonstrate, with a high degree of certainty, that the contaminant of concern is either physically or hydraulically isolated to a portion of the distribution system. The final rule states, "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.” The decision on whether to permit an exception to the system-wide notice requirement is solely with the primacy agency based on strictly applied criteria.

Akron (OH) Public Utilities Bureau (2.4): Water distribution flow patterns may need to be analyzed to determine the area affected by a boil water alert. . . If the primacy agency could be given some discretion as to an extension of the public notice, unnecessarily large areas of public notice may be avoidable.

Response: EPA agrees with the commenter that limited distribution is appropriate in those situations where the risk is absolutely limited to a portion of the distribution system. Accordingly, EPA has chosen to allow exceptions (at the primacy agency’s discretion) when the water system is able to demonstrate, with a high degree of certainty, that the contaminant of concern is either physically or hydraulically isolated to a portion of the distribution system. EPA emphasizes that specific criteria must be met to justify limited distribution, and open-ended judgements by the primacy agency are not allowed. The final rule states, “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.”

Unidentified participant at Madison meeting (E.1): We have to more sharply define who has to receive the notice, separating those clearly affected by the violation from those simply served by the water system.

Response: EPA agrees with the commenter that limited distribution is appropriate in those situations where the risk is absolutely limited to a portion of the distribution system. Accordingly, EPA has chosen to allow exceptions (at the primacy agency’s discretion) when the water system is able to demonstrate, with a high degree of certainty, that the contaminant of concern is either physically or hydraulically isolated to a portion of the distribution system. EPA emphasizes that specific criteria must be met to justify limited distribution, and open-ended judgements by the primacy agency are not allowed. The final rule states, “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.”

Unidentified participant at DC meeting (E.2): Who is responsible for giving notice at a system that purchases water? The group suggested that systems need memoranda of agreement to clarify responsibilities. Also, one person asked when the clock starts for a purchasing system on getting a PN to its customers.

Response: The rule states that each water system must notify the persons served by the system of violations. In the final rule, language 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 discuss such agreements in the *Public Notification Handbook*.

Michelle De Haan, City of Scottsdale (at Phoenix meeting) (E.4): Clarify what is meant by “all persons served.” Does this mean everyone in the system or those affected? If it means only those affected, the language should be changed to reflect this.

Response: 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 Section 1414(c)(1) of the SDWA, which requires that public notice be provided to “the persons served by the system.” However, in response to comments on the proposed rule, EPA has added language under §141.201(c)(2) 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 the notice distribution to only 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.

Topic 5: 141.202 (a) Which violations or situations require a Tier 1 public notice?

EPA is requesting comment on the Tier 1 public notification requirements, in particular the list of violations requiring such a notice, the new consultation process now proposed in lieu of more prescriptive EPA requirements, EPA's interpretation of the statute under 1414(c)(2)(C) which allows EPA to require public water systems to consult with the primacy agency, and the revised requirements for the form and manner of the Tier 1 notices. (64 FR 25975)

EPA is asking for comment on the proposed addition of explicit regulatory language enabling the primacy agency (including EPA in its regulations) to require public notification for other situations it believes have the potential for serious health risk. EPA is also asking 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 promulgated. (64 FR 25972)

Comments:

Indiana DEM (1.04): The list of violations requiring Tier 1 notice appears to be complete.

Regarding the proposed public notification requirement for failure to test for fecal coliform once total coliform in the water distribution system is confirmed, which of the following situations would this relate to:

- (1) A repeat sample which is analyzed for total coliform and not for fecal coliform;
- (2) A situation where two (or more) distribution samples are total coliform positive and repeat samples are not collected; or
- (3) A situation where one distribution sample is positive for total coliform and no repeat samples are collected (in this situation, the total coliform is not confirmed)? . . .

We believe it would be useful to allow the primacy agencies the opportunity to specify other situations (on a case-by-case basis) which would require Tier 1 public notice. A table with the situations and which type of notice they would require based on the federal rule would be helpful, as long as there is a caveat that there may be some situations where a different type of notice may be required (i.e., situations which would require a Tier 1 public notice include, but are not limited to . . .). In addition, Appendix A should be updated as new rules are promulgated.

Response: In the final PN rule, EPA has clarified where TCR testing procedure violations require Tier 1 notice. EPA has replaced the phrase, “after the presence of coliform bacteria in the water distribution system is confirmed” in the proposed rule with, “when any repeat sample tests positive for coliform.” Tier 1 notice is required for a violation of the MCL for total coliforms, when fecal coliform or *E.*

coli are present in the water distribution system, or when the system fails to test for fecal coliforms or *E. coli* when any repeat sample tests positive for coliform (Table 1 to §141.202). This revision is intended to clarify that “confirmation of the presence of coliform bacteria in the water distribution system” means that both routine and repeat samples test positive for total coliform. In the situations the commenter describes, the first situation, where a repeat sample is analyzed for total coliform but not fecal coliform or *E. coli* would be a Tier 1 violation. Situations where repeat samples are not collected would be considered monitoring and testing procedure violations, not subject to Tier 1 notice. EPA agrees that Appendix A should be updated as new rules are promulgated, and plans to do so.

EPA agrees that primacy agencies should be given the opportunity to specify other situations which would require Tier 1 public notice. Table 1 to 141.202 includes in the list of violations or situations requiring Tier 1 notice, “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.”

American Water Works Association (1.14): AWWA supports the Tier 1 violations that have been listed in the proposed regulation, along with the form and manner of the Tier 1 notices. AWWA supports the inclusion of the new chlorine dioxide Maximum Residual Disinfectant Level (MRDL) as a Tier 1 violation, as long as it is recognized that there is some flexibility for short-term exceedances of MRDLs for microbiological problems. This flexibility was a critical component of the Reg-Neg agreement for the entire concept of MRDLs. This flexibility is not clear in either the preamble or regulatory language. AWWA recommends that this flexibility for the chlorine dioxide MRDL be clearly spelled out in the final regulation.

Response: EPA disagrees with the commenter that flexibility for short-term exceedances of the chlorine dioxide MRDL for microbiological problems is appropriate. EPA also wishes to clarify that the final DBP rule allows no exception for the chlorine dioxide MRDL. The preamble to that rule states: “Unlike chlorine and chloramines, the MRDL for chlorine dioxide may not be exceeded for short periods of time to address specific microbiological contamination problems because of potential health concerns with short-term exposure to chlorine dioxide above the MCL.” (63 FR 69412) Because health effects can result from short term exposure to chlorine dioxide, EPA plans to keep acute chlorine dioxide violations in Tier 1. EPA wishes to clarify that only when the MRDL is exceeded in the distribution system has a Tier 1 violation occurred. If the MRDL is exceeded only at the entrance to the distribution system, a Tier 2 violation has occurred.

City of Glendale (AZ), Department of Public Works (1.15): Tier 1 public notice is required for NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure. The proposed rule assumes that a violation of

the MCL at the point of entry into the distribution system means that the consumer is exposed to the contaminant at the tap. While this assumption may hold true for some systems, it does not hold true for integrated systems that utilizes [sic] multiple drinking water sources. If the volume of water from a single point of entry is small relative to the total volume of water in the distribution system, then it is highly unlikely that customers will actually receive water that exceed [sic] the MCL.

The effects of blending are already recognized in the EPA regulations. We recommend that Tier 1 public notice requirements be reserved for those violations that actually have a reasonable potential to exceed the MCL at the consumer's tap, or where measurements taken in the distribution system confirm an MCL violation at the consumer's tap. Perhaps there should be distinction made between sole source and multiple source systems in determining whether a violation of the MCL at the point of entry causes unreasonable exposure requiring a Tier 1 response. . . .

False alarms and unwarranted actions are more likely to cause panic, distrust, and in the long-term apathy than to provide useful information for the public to use in their decision-making process. We urge the EPA to invest more time and effort in determining the situations in which a Tier 1 public notice is warranted.

Response: EPA recognizes that some violations may not be a concern at the consumer's tap; however, many water systems are small and have only one well. Consumers in these systems could be affected directly by an MCL violation. Where water is blended to reduce contamination levels, consumers at service connections between the source water and the blending point would need to receive public notice; beyond the blending point public notice would still be required (unless the primacy agency approves limited distribution). EPA encourages, but does not require systems to notify unaffected consumers at some point to keep them informed. In any case, the violation will be reported in the CCR.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania recommends that explicit language be added to the PN rule to allow for PN to be required in other currently uncharacterized situations that pose a potentially serious health risk. To assist in the development of that language, Pennsylvania would like to direct your attention to a regulation that DEP has had in place since December 1984. Our regulation which is found at 25 Pa. Code §109.402 and is titled "Emergency Public Notification" addresses many of the concerns cited in the supplementary information in Section IV (E)(1) of the preamble. Pennsylvania's approach in this regulation is to explicitly require a public water supplier to report to DEP within one hour of discovery of conditions that present an imminent hazard to the public health. DEP then determines what further steps the supplier must take in response. DEP has included a specific example related to failure to collect a nitrate and/or nitrite check sample in that regulation as a reason for emergency PN. However, we tried to remain general regarding other situations as it allows DEP and the supplier to address each problem at its outset and make a determination as to

the steps needed in response. . . . Pennsylvania requests that similar or identical language be included in the federal PN rule. Emergency public notice has proven useful in situations where equipment failure has placed consumers at imminent public health risk long before a laboratory analysis could be obtained to confirm it. Lack of that type of language may also make it difficult for a state that cannot be more stringent than the federal regulations to address an imminent public health risk with public notice. [*Note: Section 109.402 of the Pennsylvania code, Emergency public notification (25 Pa. Code §109.402) attached to comment.*] . . .

Pennsylvania is concerned that the language in Section IV (F)(1) automatically requiring Tier 1 PN in the event a total coliform sample is not tested for fecal coliforms or *E. coli* is overly prescriptive. DEP regulations allow a supplier to forego fecal coliform or *E. coli* testing on a positive total coliform sample if the supplier assumes that the positive total coliform sample is also fecal coliform positive and the supplier notifies DEP within one hour of making that decision. Although it is risky, there is no MCL violation until a check sample is also found to be total coliform positive. This entire scenario would be best handled under Emergency Public Notification as described above. It is a case-by-case determination that must be based on the condition of the system (Is disinfection working?), past monitoring history, circumstances surrounding the positive total coliform sample, the results of the check samples, etc.

Response: EPA has incorporated 141.23(f)(2), which requires “immediate” notice for failure to take a confirmation sample for nitrate into the list of violations or situations requiring Tier 1 notice at 141.202 (a). EPA has chosen to continue to require Tier 1 notification where a system fails to test for fecal coliform or *E. coli* after coliform presence is confirmed, as proposed. This means that initial and repeat samples have already tested positive for total coliform. Under Pennsylvania regulations, a system may choose not to perform testing for *E. coli* or fecal coliform if it assumes a sample is fecal coliform positive. Such an assumption would also trigger a Tier 1 notice. However, not all states have such rules. EPA feels that its proposal serves the same purpose as the Pennsylvania regulation but would serve as a backstop in states which do not have such authority. EPA has also decided to revise the description of the violation to clarify the instances in which Tier 1 notification will be required. EPA has added other waterborne emergencies, 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, to the list of violations and situations that require Tier 1 notice. See Table 1 to 141.202, item 7.

Metro Water District (Tucson, AZ) (1.26): Is Chlorine Dioxide MRDL violation limited to surface water systems or are groundwater systems included? If groundwater systems are included, when does it go into effect?

Response: According to the Disinfectants/Disinfection Byproducts Rule (141.65(b)), groundwater systems not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the MRDL beginning December 16, 2003.

Virginia Department of Health (1.29): Failure to test for fecal coliforms or *E. coli* is a monitoring violation that should not be distinguished as a Tier 1 violation. It is taking the "guilty until proven innocent" approach too far. At best it could fall under the Tier 1 "other violation or situation" as determined by the primacy agency.

Response: In the final PN rule, EPA has clarified where TCR testing procedure violations require Tier 1 notice. EPA has replaced the phrase, "after the presence of coliform bacteria in the water distribution system is confirmed" in the proposed rule with, "when any repeat sample tests positive for coliform." Tier 1 notice is required for a violation of the MCL for total coliforms, when fecal coliform or *E. coli* are present in the water distribution system, or when the system fails to test for fecal coliforms or *E. coli* when any repeat sample tests positive for coliform (Table 1 to §141.202). This revision is intended to clarify that "confirmation of the presence of coliform bacteria in the water distribution system" means that both routine and repeat samples test positive for total coliform. Regarding the commenter's concern about a system being "guilty until proven innocent" EPA believes that if there is a direct threat to public health from short-term exposure to drinking water, public notice should be distributed as soon as practical to allow consumers to take steps to protect their health. In this case, the public health threat exists not just from the failure to monitor but because of the failure to monitor when coliform has already been found to be present.

Iowa Department of Natural Resources (1.30): The violation of the total coliform MCL with the presence of fecal coliform or *E. coli* in the initial or repeat sample(s) is clearly a Tier 1 violation. However, it is unclear what is meant by the "failure to test for fecal coliforms or *E. coli* after the presence of coliform bacteria in the water distribution system is confirmed." In practical terms, if a supply has a routine/initial total coliform positive and fecal/*E. coli* negative sample, three or four repeat samples are required. These repeat samples are analyzed for total coliform bacteria, and if those bacteria are determined to be present in the sample, then analyzed for the presence of fecal/*E. coli*. Listed below are questions raised by this phrasing:

- What is meant by "after the presence of coliform bacteria in the water distribution system is confirmed"? Is the presence of coliform bacteria only "confirmed" by the analysis of routine/initial And repeat/check samples?
- If the supply fails to collect any or all of their repeat/check samples, does that constitute "failure to test for fecal coliforms or *E. coli*"? Under the current rules, that would be either a major or minor check/repeat sample monitoring violation, although in actuality that failure to monitor could result in the supply missing an acute or non-acute coliform MCL violation.

- If the laboratory fails to conduct the fecal/*E. coli* confirmation of the total coliform positive repeat sample, does that constitute the "failure to test. . . "?

The IDNR requests clarification in the rule of what exactly is meant by "failure to test for fecal coliforms. . . "

Microbiological contaminants: All violations of these contaminants, with the previously mentioned exception to the total coliform non-acute violation time period, should be increased to Tier 1 MCL/MRDL/TT violations . . . The IDNR strongly urges such a change in violation classification.

Response: In the final PN rule, EPA has clarified where TCR testing procedure violations require Tier 1 notice. EPA has replaced the phrase, "after the presence of coliform bacteria in the water distribution system is confirmed" in the proposed rule with, "when any repeat sample tests positive for coliform." Tier 1 notice is required for a violation of the MCL for total coliforms, when fecal coliform or *E. coli* are present in the water distribution system, or when the system fails to test for fecal coliforms or *E. coli* when any repeat sample tests positive for coliform (Table 1 to §141.202). This revision is intended to clarify that "confirmation of the presence of coliform bacteria in the water distribution system" means that both routine and repeat samples test positive for total coliform. Failure to collect any repeat samples would not automatically fall into Tier 1, since the presence of coliform has not been confirmed. The rule does authorize primacy agencies to elevate monitoring and testing procedure violations to Tier 2 or Tier 1 based on the potential for adverse health effects.

EPA has decided to leave microbiological violations in Tier 2. However, it has decided to require 24-hour consultation with the primacy agency in the event of a single turbidity exceedance. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. EPA believes that turbidity exceedances can be a strong indication that filtration is not working correctly, and filtration is the best protection against parasites such as *Giardia* and *Cryptosporidium*. In the event of other SWTR violations, other barriers may be in effect to protect the drinking water supply. Primacy agencies would make this determination.

Utah DEQ, Division of Drinking Water (1.31): The State of Utah agrees that some situations will arise that require notification of the public and are not specifically addressed by this proposed rule. The circumstances and public health risk of these situations will vary and must be handled on a case by case basis. Utah has been faced with this situation and has responded appropriately. . . . The language in paragraph (5) of Table 1 to § 141.202. appears appropriate. The language is general in nature and allows the states the flexibility to deal effectively with each individual circumstance.

Response: EPA has decided to maintain the flexibility allowed by the language in 141.202(a). All the comments EPA received on this issue supported giving the primacy agencies flexibility to require notice for situations besides those specifically listed.

Maryland Department of the Environment (1.34): Tier 1 notices require a water system to reach all persons served within a 24-hour period. This type of notice should be reserved for water quality issues which are immediate public health concerns. In most cases, these events are not violations because they may be short lived, and not covered by current regulations. For example, the following situations may require a 24-hour notice:

- 1) Boil water advisory with a fecal coliform violation
- 2) Boil water advisories without a coliform violation
- 3) Chemical overfeed affecting water quality
- 4) Waterborne disease outbreak
- 5) Treatment technique (TT) violation for a surface supply: elevated turbidity entering the distribution system.

Some systems can isolate these problems due to clearwell storage design. In situations where the water does not enter the distribution, a notice should not be required.

Response: EPA agrees that Tier 1 public notice needs to be focused and 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 MCL violations and Surface Water Treatment Rule 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.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): [T]he proposed addition of explicit regulatory language enabling the primacy agency to require public notification for other situations it believes have the potential for serious health risk. . . . When EPA, or the primacy agency, recognizes that a particular water system is delivering dangerous water to customers of the system, EPA should have the authority to require public notice, even if no specific violation of a NPDWR has occurred.

Response: EPA agrees with the comment. In addition, EPA believes systems should take responsibility for public notification for situations that are not violations but may pose a health risk. Therefore, in the final rule, EPA has added other waterborne emergencies 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 to the list of violations and situations that require Tier 1 notice. See Table 1 to 141.202, item 7.

American Water Works Service Co., Inc. (1.46): Chlorine dioxide notification is proposed as Tier 1 for both MCL and monitoring violations. We agree that chlorine dioxide exposure can present an acute health effect, but not so extreme or immediate as fecal contamination or nitrates, so we suggest both be Tier 2 for chlorine dioxide.

Response: EPA plans to keep acute chlorine dioxide violations in Tier 1. Exceedance of the MRDL for chlorine dioxide is already a Tier 1 violation in EPA's regulations under 141.133(c)(2)(i) and 141.32(a)(1)(iii)(E). As the commenter recognizes, health effects can result from due to short term exposure to chlorine dioxide; all violations with acute health effects are Tier 1 violations. EPA wishes to clarify that only when the MRDL is exceeded in the distribution system has a Tier 1 violation occurred. If the MRDL is exceeded only at the entrance to the distribution system, a Tier 2 violation has occurred.

Paul Zielinski, Pennsylvania American Water Company (at Allentown meeting) (E.3): EPA should define the requirements for elevating violations to higher tiers to give systems advance warning that they may have less time to create notices.

Response: EPA has decided not to specify criteria on when to elevate other violations and situations to Tier 1 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. 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 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, shortly.

Definition of a Waterborne Disease Outbreak

Comments:

Indiana DEM (1.04): Regarding the definition for *Waterborne disease outbreak*, we agree that the definition should be expanded, however it should relate to all instances where *waterborne disease outbreak* is used in the EPA regulations, and not be exclusive to the public notification rule.

Response: EPA has decided to not further define a “waterborne disease outbreak” in the rule, and chose instead to leave the term as defined in 141.2. However, in the final rule, EPA has added other waterborne emergencies, 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, to the list of violations and situations that require Tier 1 notice. See Table 1 to 141.202, item 7.

Consumer Federation of America (1.11): We agree that waterborne disease outbreaks should be subject to public notification within 24 hours. We are concerned, however, that the definition in the proposed rule would undermine the timeliness of those reports. The proposed rule defines waterborne disease outbreaks as:

... 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. "

The medical and public health community is accustomed to conducting lengthy study before deeming a group of cases either an "outbreak" or "epidemiologically associated" with water. Thus, the determination of a waterborne disease outbreak, as defined in the rule, is likely to be a time-consuming process. Since the purpose of public notification in this case is to warn people quickly to take sensible precautions to prevent more cases of waterborne illness, delaying the notification while a formal determination is made would almost certainly result in more people becoming ill.

We propose changing the definition as follows: "If a public health or drinking water official (federal, state or local official) concludes that a significant number of new cases of probable waterborne disease are occurring, public notice should be given within 24 hours." This would balance the need for timely notification with the need for a reasonable degree of certainty that the cases in question are water related.

Response: EPA has decided to not define a “waterborne disease outbreak” in the rule, and chose instead to leave the term as defined in 141.2. However, in the final rule, EPA has added other waterborne emergencies, 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, to the list of violations and situations that require Tier 1 notice. See Table 1 to 141.202, item 7.

Association of California Water Agencies (1.16): The definition of "waterborne disease outbreak" as a Tier 1 notification requirement does not sufficiently convey the serious health effects associated with the other contaminants/violation circumstances included in this Tier.

Recommendation: Language similar to that in the preamble (see page 25974) should be included to indicate that in addition to short-term (acute) risk the waterborne disease outbreak poses a "serious" health risk.

Response: The language in the preamble is identical to the definition in 141.2. The proposed rule refers to this definition. EPA believes that a waterborne disease outbreak is a serious situation, as are other emergencies such as chemical spills or overfeeds or natural disasters. In the PN rule, EPA cannot address every possible situation for which 24-hour notice may be needed. For this reason, Table 1 to 141.202 attempts to define situations requiring Tier 1 notice as broadly as possible. EPA believes that it is very important that every water system have a contingency plan for addressing emergencies.

City of Phoenix, Water Services Department (1.18): It is unclear what type of public notification should be used when an outbreak occurs by a cause other than a MCL or treatment violation (such as backflow incident). We recommend that you make the outbreak definition a general one. Do not limit the outbreak definition to treatment violations, but to any outbreak that may occur because of consuming water. An outbreak public notification should be triggered when drinking water is identified as the primary source of a health effect.

Response: In the final rule, EPA has added other waterborne emergencies, 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, to the list of violations and situations that require Tier 1 notice. See Table 1 to 141.202, item 7.

Natural Resources Defense Council (1.24): We are concerned with the agency's use of the following definition of waterborne disease 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.

This definition leaves too much room for interpretation and delay by virtue of the inclusion of the underlined words. By using the word *significant* to define the occurrence, we may be faced

with a situation where the primacy agency is forced into a protracted debate over whether the occurrence in their locality is significant, thereby not effectuating the required immediate Tier One action. Secondly, conclusively determining whether the occurrence of infectious illness is *epidemiologically associated* with the ingestion of water could take months or years of study before a group of cases can be formally deemed an outbreak or epidemiologically associated with water. This type of delay runs contrary to the SDWA's intent to act swiftly and in a preventative fashion to protect public health.

We urge EPA to adopt an alternative definition and propose the following language: If a federal, state, or local drinking water or public health official determines that a notable number of cases of acute infectious illness, likely related to drinking water are occurring, public notice shall [sic] should be given within 24 hours.

Response: In the final rule, EPA has added other waterborne emergencies, 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, to the list of violations and situations that require Tier 1 notice. See Table 1 to 141.202, item 7.

Metro Water District (Tucson, AZ) (1.26): Change "water-born disease outbreak" to be "distribution related water-born disease outbreak" thereby limiting the definition to a public water supply. . . The mechanism as to how water-borne disease outbreaks is related to the public water supplies is the crucial factor since they, the public water supplies, do not monitor and collect disease data.

Response: EPA believes that the existing definition of a "waterborne disease outbreak" in 141.2 provides the limitations suggested by the commenter.

Notification of Nitrate Violations

Comments:

City of Glendale (AZ), Department of Public Works (1.15): The proposed rule requires Tier 1 public notification for violations of the MCL for nitrates, nitrites, or the combination of nitrates and nitrites. We do not believe such violations warrant Tier 1 response, particularly where the maximum concentration does not exceed 20 mg/L. Several states presently allow water systems to serve water that contain nitrates at concentrations over the MCL, up to 20mg/L, as long as notice is provided to customers. Tier 1 public notice for nitrates and nitrites should be required only when the MCL exceed 20 mg/L measured in the distribution system.

Response: EPA disagrees that nitrates, nitrites, and total nitrate and nitrite do not warrant Tier 1 notice. Exposure to these contaminants can have serious health effects for infants below the age of six months. However, federal regulations (40

CFR 141.11(d)) allow *non-community* water systems only to serve water at concentrations up to 20 mg/l, as long as notice is provided and the water is not available to infants under the age of six months. In the final rule (section 141.209), EPA has added a requirement for a special notice of nitrate exceedances by NCWS above 10 mg/l. Where a non-community water system has been authorized by the primacy agency to exceed the nitrate MCL, a special notice must be provided that meets the requirements for a Tier 1 notice. Non-community water systems must provide continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure.

Metro Water District (Tucson, AZ) (1.26): Suggest MCL violations for Nitrate, Nitrite Or Nitrate + Nitrite, be Tier two or part of the Two-Tier Alternative. These MCL's do not correlate with Tier one intentions regarding the urgency to other parameters and the related immediate health effects potentials. Although health effects issues are significant, nitrate, nitrite or nitrate + nitrite can be blended and the MCL could be back in compliance before the 24-hour window.

Response: In the case of a violation or situation with significant potential to have serious adverse effects on human health as a result of short-term exposure, the critical issue is getting information to consumers as quickly as possible. EPA does not believe that a quick return to compliance negates the need for 24-hour notice. Consumers have a right to know about the quality of their drinking water, including whether they were exposed to contaminants. EPA also believes that consumers should be notified in such situations because the situation may recur. In their notices, systems should explain that blending has solved the problem. Where water is blended to reduce contamination levels, consumers at service connections between the source water and the blending point would need to receive public notice; beyond the blending point public notice would still be required (unless the primacy agency approves limited distribution).

American Water Works Service Co., Inc. (1.46): There should not be a separate notification for combined nitrate and nitrite, since there is no separate MCL for the combination. Current regulation calls for increased monitoring if the combined nitrate and nitrite is over 10 mg/L, so no notification should be required at all, unless an individual MCL is exceeded.

Response: Federal regulations do specify a separate MCL for total nitrate and nitrite (40 CFR 141.62(b)(9)). Public notice is required for this violation.

Notification of SWTR and/or IESWTR Violations

Comments:

Washington State Department of Health, Division of Drinking Water (1.06): The July 2, 1999 ASDWA Weekly SDWA Implementation Update indicates that EPA is considering moving a turbidity violation for surface water supplies from a Tier 2 (30 day notice) to Tier 1 (24 hour

notice). We strongly believe that this is unnecessary from a public health perspective, that it poses an unreasonable burden on water system operators, and that it could conceivably result in undue confusion and concern among consumers. Unsteady turbidity readings are not unusual and do not always pose an immediate or imminent risk to public health. Conditions resulting in unusual turbidity readings can often be corrected within hours and it could be that by the time the public received the Tier 1 24-hour notice, the "emergency" would be over. Turbidity violations are simply not the same magnitude as other events in the Tier 1 category.

Response: EPA agrees with the commenter, and has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement.

EPA is concerned that placing turbidity in Tier 1 could result in some unnecessary Tier 1 alerts, potentially enuring the public to the seriousness of drinking water violations. The Agency believes that adding a consultation requirement for turbidity violations inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. Given the relatively small number of turbidity single exceedances (EPA's ICR estimates approximately 200 consultations per year), EPA does not anticipate this requirement will be overly burdensome to states or water systems. 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.

Consumer Federation of America (1.11): Surges in the turbidity level, even in some cases spikes that do not reach the MCL, have been the only predictor of cryptosporidiosis outbreaks. Cryptosporidiosis is not only a serious acute illness for many, it continues to be fatal for many immune compromised individuals. The traditional indicators of microbial pathogens -- lack of disinfection or violations of total coliform -- did not precede six of the seven confirmed cryptosporidiosis outbreaks from 1984 to 1994. Furthermore, there is now evidence that significant increases in gastrointestinal cases requiring hospitalizations are associated with spikes in turbidity. These cases have occurred not only among the severely immune compromised, but also among children age 3 and older.¹

¹ Schwartz J, Levin R, Hodge K. Drinking Water Turbidity and Pediatric Hospital Use for Gastrointestinal Illness in Philadelphia. *Epidemiology* 1997; vol. 8 no. 6: 615-620.

In light of this evidence of health threats associated with turbidity surges that are, by any definition, "significant and urgent enough to require an emergency notice," an MCL violation of turbidity clearly should trigger an emergency public notice within 24 hours. If a violation of the MCL of turbidity remains in Tier 2, as proposed, the public notification would be delivered 30 to 90 days after the fact. This is too late to allow members of the public to take sensible precautions to protect their health.

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement involves the primacy agency in the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

Missouri Department of Natural Resources (1.13): Turbidity in excess of 5 NTU's needs to be bumped up to a Tier 1 violation.

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in

the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

American Water Works Association (1.14): AWWA also supports EPA's proposal that turbidity violations NOT be automatically mandated to be a Tier 1 violation. The primacy agency needs the flexibility to determine if a Tier 1 violation is warranted. There are many instances where a turbidity violation may not warrant a massive boil water notice. One example is where a turbidimeter malfunctions and measurements that are clearly erroneous are recorded. Another example could be where lime is used to raise the pH for the Lead & Copper Rule and the lime increases turbidity, which doesn't impact public health protection. Another example is the utility response to a high turbidity event, i.e., the utility may have shut down the treatment plant or dumped the water in the clearwell. These responses would negate the need for a massive boil water notice, and the state needs the flexibility to take these issues, along with many other possibilities, into account when determining if a Tier 1 violation is warranted or not. We don't want to desensitize the public to the importance of Tier 1 violations that have immediate health implications, i.e., we don't want the public to ignore boil water notices due to too many notices.

Response: EPA agrees with the commenter, and has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement.

EPA is concerned that placing turbidity in Tier 1 could result in some unnecessary Tier 1 alerts, potentially enuring the public to the seriousness of drinking water violations. The Agency believes that adding a consultation requirement for turbidity violations inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. Given the relatively small number of turbidity single exceedances (EPA's ICR estimates approximately 200 consultations per year), EPA does not anticipate this requirement will be overly burdensome to states or water systems. 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.

Oregon Health Division (1.20): Routine turbidity and treatment technique violations should not be placed in Tier 1. These type of violations are appropriate in Tier 2, and the States should have flexibility to determine when violations should be elevated to Tier 1. . . . **Routine turbidity and treatment violations are appropriately placed in Tier 2**, because the provision for other Tier 1 violations to be determined by the State. For example, an extreme level of turbidity and treatment violation may warrant Tier 1 notice, but the States should have the flexibility to make such determinations.

Response: EPA agrees with the commenter, and has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement.

EPA is concerned that placing turbidity in Tier 1 could result in some unnecessary Tier 1 alerts, potentially enuring the public to the seriousness of drinking water violations. The Agency believes that adding a consultation requirement for turbidity violations inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. Given the relatively small number of turbidity single exceedances (EPA's ICR estimates approximately 200 consultations per year), EPA does not

anticipate this requirement will be overly burdensome to states or water systems. 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.

Natural Resources Defense Council (1.24): We are extremely concerned with the agency's decision to exclude turbidity violations because, although not necessarily a health hazard in itself, surges in water turbidity levels are often the only indicator of microbial contamination. Turbidity was the only indicator of a problem in the waterborne disease outbreak in Milwaukee and certain other cases. We urge EPA to include turbidity among Tier One violations to properly protect public health. . . .

Several recent studies have documented that turbidity spikes can be the only known advance indications of waterborne disease outbreaks. In addition, several recent papers show that even modest increases in turbidity are associated with increases in hospital admissions for vulnerable people such as children.

We therefore urge the agency to adopt a Tier One classification for MCL violations of turbidity in order to prevent future large-scale outbreaks.

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

Iowa Department of Natural Resources (1.30): IDNR supports the inclusion of the five categories listed in the table. However, treatment technique violations of the surface water treatment rule - SWTR - (elevated turbidity due to inadequate filtration, insufficient disinfectant contact time, or failure to maintain a disinfectant residual) are also violations which could cause waterborne illness outbreaks in a very short time period, yielding acute health effects for affected populations. The argument that multiple violation notices inure the public to the "serious" violations is outweighed by both the infrequent occurrence of these violations (at least in Iowa, and probably nationwide) and the seriousness of the potential health consequences of such a violation. The IDNR supports the inclusion of the SWTR treatment technique violations in the Tier 1 violation category. . . .

[V]iolations of SWTR treatment techniques should be considered Tier 1 violations, due to their potential for adversely impacting public health in an immediate and serious manner. The IDNR strongly urges the reclassification of SWTR treatment technique (TT) violations as Tier 1 violations.

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

New Jersey DEP, Interagency Work Group on Infectious Disease and Drinking Water (1.32): Turbidity above 1 nephelometric turbidity unit (NTU) should be specifically listed as a possible trigger for 24-hour primacy agency and public notification in the Tier I list of the newly proposed Public Notification Rule. This number represents the upper limit in the Interim Enhanced Surface Water Treatment Rule. The 1 NTU upper limit is based in part on the waterborne cryptosporidiosis outbreak in Milwaukee, Wisconsin in 1993. The Milwaukee water system never violated the turbidity standard in place at the time (a 5 NTU upper limit). In addition, timely notification of the state primacy agency and the local health department(s) upon reaching 1 NTU would have been valuable.

Under the current proposal, surface water treatment problems, in addition to fecal coliform detection, can be included by primacy states as one of the important triggers for public notification. Including turbidity specifically in the list would mean that water purveyors would be required to notify state primacy agencies within 24 hours, or preferably within 6-12 hours, to discuss the cause and whether the elevated turbidity warrants immediate notification of the local health agency and possibly a boil water advisory.

A mechanism should also be considered under this proposed rule (or under the planned Enhanced Surface Water Treatment Rule) whereby systems are required to quickly notify the state primacy agency at some trigger point between 0.3 NTU (the limit for the 95th percentile of monthly samples) and 1 NTU. That trigger point could be set on the basis of the normal operating range of turbidity for each system. Too often important communication between the water system and the state is delayed until a major problem has emerged. A national policy would serve to improve preventive measures by insuring prompt involvement of state and local staff in a potentially acute public health event. *[Note: identical comment submitted by New Jersey Department of Health and Senior Services.]*

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the

primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required or where the consultation does not take place within 24 hours. The commenter suggested that consultation be initiated at some trigger point between 0.3 NTU and 1 NTU. EPA will consider this suggestion as it amends the Interim Enhanced Surface Water Treatment Rule.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

Illinois EPA, Division of Public Water Supplies (1.33): It is understood that consideration may be given to changing turbidity violations from Tier 2 to Tier 1 for public notice. Care should be taken to only upgrade the violations that are easily identified at the moment. Violations involving any one sample over 1 NTU is easily identified and could be followed with PN within 24 hours.

However, the violation involving 95% of the samples within a month is much more difficult. There are some situations where this is easily identified, i.e. a large plant which operates 24 hours, 7 days a week, must take at least 6 combined effluent readings each day or 180 in, for example, the month of June. If there are continuous turbidity problems for eleven reading or forty-four hours, 6 percent of the samples exceed and therefore a violation can be identified. Other situations are not as clearly identified and could result in a supply not making PN within 24 hours. Many small supplies only operate when there is a need and therefore do not know how

many samples will be taken in a month. If one or two samples are over at different times during the month, the supply may not be aware of the violation until they are preparing the monthly report at the beginning of the next month.

Therefore only the single reading over 5 or 1 NTU should be Tier 1. If a state is aware of a supply exceeding the 0.3 or 0.5 for a significant period of time they have the option of upgrading the PN to Tier 1.

Additionally, if there is discussion of upgrading the turbidity to Tier 1, the disinfectant level at the entry point should also be included. Similar to the turbidity only the easily identified violation (maintaining a minimal level at the entry point) should be upgraded. The violations for samples from the distribution system should not be included. [*Note: the first three paragraphs of this comment submitted in a separate comment from Illinois EPA.*]

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

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EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

Association of Metropolitan Water Agencies (1.35): AMWA believes that turbidity, Surface water Treatment Rule and Interim Enhanced Surface Water Treatment Rule violations belong in Tier 2.

Response: EPA agrees with the commenter, and has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement.

EPA is concerned that placing turbidity in Tier 1 could result in some unnecessary Tier 1 alerts, potentially enuring the public to the seriousness of drinking water violations. The Agency believes that adding a consultation requirement for turbidity violations inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. Given the relatively small number of turbidity single exceedances (EPA's ICR estimates approximately 200 consultations per year), EPA does not anticipate this requirement will be overly burdensome to states or water systems. 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.

Texas Natural Resource Conservation Commission (2.3): We agree with EPA's approach to not include . . . SWTR violations in the Tier 1 list. The majority of the turbidity violations under the SWTR rule do not pose a significant health risk. . . It is best left to the State primacy agency to determine Tier 1 violations using a combination of TCR distribution system sampling results, maintenance of CT values, filtration practices, disinfection residuals, and knowledge of the water system operation.

The manpower requirements on the part of the water system and the state regulatory agency would be too intensive to follow up on 24 hour notifications for all TCR and SWTR violations. This would dilute the intent and meaning of the Tier 1 notification over a period of time such that the public would not detect the sense of urgency to [sic] the notice and not pay attention to it.

Response: EPA agrees with the commenter, and has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24

hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement.

EPA is concerned that placing turbidity in Tier 1 could result in some unnecessary Tier 1 alerts, potentially enuring the public to the seriousness of drinking water violations. The Agency believes that adding a consultation requirement for turbidity violations inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. Given the relatively small number of turbidity single exceedances (EPA's ICR estimates approximately 200 consultations per year), EPA does not anticipate this requirement will be overly burdensome to states or water systems. 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.

Alabama Department of Environmental Management (2.5): I am very opposed to moving turbidity to Tier 1, if the raw water quality is such that turbidity will mask disinfection, bact. analysis should be the next step, then you have something quality related to trigger notice. Let the treatment rule handle it.

Response: EPA agrees with the commenter, and has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement.

EPA is concerned that placing turbidity in Tier 1 could result in some unnecessary Tier 1 alerts, potentially enuring the public to the seriousness of drinking water violations. The Agency believes that adding a consultation requirement for turbidity violations inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. Given the relatively small number of turbidity single exceedances (EPA's ICR estimates approximately 200 consultations per year), EPA does not anticipate this requirement will be overly burdensome to states or water systems. 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.

Diana Neidle, Consumer Federation of America (at DC meeting) (E.2): People died during the Cryptosporidium outbreak in Milwaukee. Turbidity should be Tier 1. At a meeting on June 2, a presenter described eight Cryptosporidium outbreaks where fecal coliform was not present. Only elevated turbidity levels were indicated in these situations. Although not every turbidity exceedance indicates the presence of Cryptosporidium, protecting public health should be EPA's objective.

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

Richard Kolish, City of Baltimore (at DC meeting) (E.2): If turbidity becomes Tier 1, there will be many such violations over a short time. Historically, even an exceedance of 5 NTU was not considered an emergency if a system added a lot of chlorine and no coliform bacteria were present. This may not have been the right assumption all the time, but it should be kept in mind when assigning a tier to turbidity exceedances. The linkage of turbidity to Cryptosporidium is an

important one, but it is also important to consider the water source before requiring public notification for increased turbidity. If *Cryptosporidium* has not been detected in the raw water at that time or previously, turbidity may not be significant.

Response: EPA agrees with the commenter, and has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement.

EPA is concerned that placing turbidity in Tier 1 could result in some unnecessary Tier 1 alerts, potentially enuring the public to the seriousness of drinking water violations. The Agency believes that adding a consultation requirement for turbidity violations inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. Given the relatively small number of turbidity single exceedances (EPA's ICR estimates approximately 200 consultations per year), EPA does not anticipate this requirement will be overly burdensome to states or water systems. 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.

Adrianna Quintero, Natural Resources Defense Council (at DC meeting) (E.2): Turbidity should be a Tier 1 violation. In Milwaukee, turbidity levels were elevated at the time of the disease outbreak.

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

William Slade, DC Environmental Health Administration (at DC meeting) (E.2): Failure to monitor for turbidity should be a Tier 1 violation.

Response: Primacy agencies have the discretion to elevate any monitoring violation to Tier 2 or even Tier 1. EPA believes that most monitoring and testing procedure violations do not warrant Tier 1 notice; however, if such notice is needed, the authority to require it is available.

Frederick Loomis, Clean Water Action (at Allentown meeting) (E.3): Turbidity violations should be included in Tier 1.

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

Laura May, Arizona AIDS Network (at Phoenix meeting) (E.4): Cryptosporidium is difficult to detect in drinking water and causes devastating disease in AIDS patients. Because of its correlation to high turbidity levels, EPA should consider making turbidity violations a Tier 1 situation.

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

Phyllis Rowe, Arizona Consumers Council (at Phoenix meeting) (E.4): Turbidity exceedances should be included as Tier 1 violations. Studies by Harvard and the Centers for Disease Control have correlated spikes in turbidity levels in drinking water (in the absence of other indicators) with gastrointestinal illnesses and emergency room visits. Children and elderly adults are at risk.

Response: EPA has decided to continue to require a Tier 2 rather than Tier 1 notice for turbidity exceedances; however, it has added a new 24-hour consultation requirement in the event of a single turbidity exceedance. EPA requires that PWSs consult with the primacy agency as soon as practical, but within 24 hours of learning of a single turbidity exceedance [141.203 (b)]. During this consultation, the primacy agency must determine whether public notice is necessary in less than 30 days. If the PWS is unable to make contact with the primacy agency within 24 hours, turbidity violations would automatically default to a Tier 1 notice requirement. Table 1 of 141.202 now includes turbidity single exceedances where the primacy agency determines after consultation that a Tier 1 notice is required, or where contact between the operator and the primacy agency does not take place within 24 hours of when the system learns of the violation.

EPA recognizes that the public health consequences of not alerting the public quickly when pathogens have passed through to the drinking water are very high. However, EPA does not believe that *all* such turbidity excursions should prompt a Tier 1 notice. 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 into the usefulness of turbidity as an indicator as part of the development of the Long Term Enhanced Surface Water Treatment Rule.

EPA agrees that certain exceedances of the turbidity limit deserve special attention in the final rule, and the consultation requirement inserts the primacy agency into the decision-making process on whether the situation requires elevation to Tier 1. 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. 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.

Notification of Coliform Violations

Comments:

Massachusetts DEP (1.08): An MCL violation for total coliform should be required under the Tier 2 violation. The presence of total coliform doesn't necessarily identify a problem with the source water but it is considered an indicator of a potential source water problem. In addition, because Tier 2 notices are required within 30 days, an MCL violation for any contaminant that is monitored on a quarterly or monthly basis should automatically be considered a Tier 2 violation.

Response: EPA agrees with the comment, and has retained the Tier 2 notice requirement for total coliform violations.

Consumer Federation of America (1.11): In some cases a total coliform violation does not indicate a health threat. However, coliform in treated water often indicates the presence of a variety of pathogenic microbes and parasites - not only fecal coliform. EPA makes clear the health reasons for establishing a MCL for coliform in Regulation 141.32, which states:

The presence of these bacteria [coliform] in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. . . . EPA has set an enforceable drinking water standard for total coliform to reduce the risk of these adverse health effects.

In light of the seriousness of these health effects, the public should receive notification promptly of violations of the total coliform MCL. This is particularly important since a violation is not determined by a single test. A violation of total coliform only occurs if coliform has been detected in more than five percent of many samples over the course of a month. Delaying public notification of a total coliform violation until 30 days after that month of testing is little more than a useless gesture, leaving those more vulnerable to infection with no opportunity to take timely precautions.

Response: EPA has decided to keep total coliform MCL violations in Tier 2. EPA defines a Tier 1 violation as one with a significant potential to have serious adverse effects on human health as a result of short term exposure. Most TCR violations (without supporting evidence) are not sufficiently strong or predictable indicators of *significant* potential of risk from short-term exposure. Most TCR violations with no evidence of fecal contamination clearly do not provide sufficient evidence indicating significant potential of short-term health risk. Moving total coliform MCLs to Tier 1 would result in an increase in false alarms and might cause the public to ignore subsequent notices for fecal coliform or *E. coli* MCL violations. The rule still requires that notice be given as soon as practical and gives primacy agencies the authority to elevate such violations to Tier 1 if they think the violation presents a health threat. EPA does have a means to determine whether a positive test for total coliform is an emergency: Tier 1 notice is required whenever a system fails to test for fecal coliform or *E. coli* after repeat samples test positive for coliform.

American Water Works Association (1.14): AWWA supports EPA's proposal that total coliform violations (absent of fecal contamination) NOT be automatically mandated to be a Tier 1 violation. Again, the primacy agency needs the flexibility to determine if a Tier 1 violation is warranted.

Response: EPA agrees and has retained this requirement in the final rule.

Natural Resources Defense Council (1.24): We strongly recommend that the agency classify a violation of the total coliform MCL as a Tier One violation requiring a notice to issue within 24 hours. The proposed rule currently requires notice within 24 hours only where the mandatory follow-up test is positive for fecal coliform or *E. coli* in the distribution system; or if the fecal coliform test is not performed. The presence of coliform in treated water, however, is an indication of the potential presence of a variety of pathogenic microbes and parasites— not only fecal coliform. EPA has made clear the health reasons for establishing a MCL for coliform. Section 141.32 indicates that total coliform in some cases *may* be harmless, and goes on to state:

The presence of these bacteria [total coliform] in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any

associated headaches and fatigue. . . EPA has set an enforceable drinking water standard for total coliform to reduce the risk of these adverse health effects.

The public particularly in light of the potential impacts on vulnerable populations of the organisms that may be indicated by the presence of total coliform should receive notification promptly. Because a violation of total coliform only occurs if coliform has been detected in more than 5% of several samples during a month, delaying public notification beyond 24 hours after the violation is detected would extend this period for well over one month from the occurrence. This delay poses an unnecessary health risk to consumers, and sends a clear signal that the violation is not serious or worthy of significant health concern.

Response: EPA has decided to keep total coliform MCL violations in Tier 2. EPA defines a Tier 1 violation as one with a significant potential to have serious adverse effects on human health as a result of short term exposure. Most TCR violations (without supporting evidence) are not sufficiently strong or predictable indicators of *significant* potential of risk from short-term exposure. Most TCR violations with no evidence of fecal contamination clearly do not provide sufficient evidence indicating significant potential of short-term health risk. Moving total coliform MCLs to Tier 1 would result in an increase in false alarms and might cause the public to ignore subsequent notices for fecal coliform or *E. coli* MCL violations. The rule still requires that notice be given as soon as practical and gives primacy agencies the authority to elevate such violations to Tier 1 if they think the violation presents a health threat. EPA does have a means to determine whether a positive test for total coliform is an emergency: Tier 1 notice is required whenever a system fails to test for fecal coliform or *E. coli* after repeat samples test positive for coliform.

Iowa Department of Natural Resources (1.30): The exclusion of non-acute coliform maximum contaminant level (MCL) violations from the Tier 1 table is somewhat troublesome, since such a violation indicates pathways for pathogenic organisms are present in the water system. While a 24-hour notice may be overreaction, the 30-day notice for Tier 2 violations seems to be too long for affected target populations. The 90-day extended notice should not be allowed for non-acute coliform MCL violations. The IDNR suggest a special 15-day notice solely for non-acute coliform MCL violations, which would remain a Tier 2 violation.

Response: In the final rule, EPA has decided to narrow the circumstances where extensions will be allowed. For initial notices, EPA will allow no “across-the-board” extensions; no extensions will be allowed for unresolved violations of any kind. Any extension of the 30 day time frame will only be in situations where the primacy agency deems it appropriate based on the risk posed by the situation. Regarding the commenter’s suggestion of a special 15-day notice solely for non-acute coliform MCL violations, EPA believes that adding another notification tier would complicate the rule. EPA requires that all Tier 2 notices be distributed as

soon as practical, and that 30 days is the longest amount of time a Tier 2 notice should take for an unresolved violation.

Association of Metropolitan Water Agencies (1.35): AMWA believes that total coliform violations properly belong in Tier 2. Tier 1 should be reserved for violations with significant potential to have serious adverse effects on human health. EPA has long acknowledged that this is not the case with total coliform violations absent indications of fecal contamination. However, it is appropriate for the States to have the authority to elevate such violations to Tier 1 based on specific, case-by case information indicating that immediate notification is appropriate for public health protection. In the majority of cases, however, Tier 1 type notification for total coliform may only serve to needlessly alarm the public, and, over time, desensitize the public to the importance of taking appropriate action for Tier 1 violations that do have immediate health implications.

Response: EPA agrees and has retained this approach in the final rule.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): Violations of the Total Coliform Rule (more than 5% of monthly samples positive) should not be included in the Tier 1 group. A positive result for a total coliform test does not necessarily indicate that harmful organisms are present. However, if the confirmation test indicates that fecal coliform is present, then a Tier 1 notice should be required.

Response: EPA agrees with the comment. However, there may be some cases where a primacy agency feels it is necessary to elevate a total coliform MCL violation to Tier 1 based on other information.

City of Madison (1.43): I strongly agree with the EPA position reflected in the draft Rule that Total Coliform should be considered a Tier 2 violation rather than a Tier 1 violation. As you know, there has been much debate of late as to the efficacy of Total Coliform as an appropriate indicator for fecal pollution and an implied public health risk. While the "total coliform" group of indicators was originally developed as a surrogate for *E. coli*, this association no longer exists. The great majority of positive total coliform tests do not contain *E. coli*. The other genera in the group are ubiquitous in the environment, are not associated with fecal contamination, and do not imply a health risk. Consequently, it would be inappropriate to consider Total Coliform a Tier 1 violation in the Public Notification Rule.

Response: EPA agrees and has retained this approach in the final rule.

Texas Natural Resource Conservation Commission (2.3): We agree with EPA's approach to not include the TCR . . . violations in the Tier 1 list. The majority of the turbidity violations under the SWTR rule do not pose a significant health risk, and the same holds true for violations of the Total Coliform rule. It is best left to the State primacy agency to determine Tier 1 violations . . . The inclusion of fecal coliform positive samples in the Tier 1 category is appropriate, thus

signifying a potential acute health risk; whereas, a Total Coliform positive result only is not an acute health risk.

Response: EPA agrees and has retained this approach in the final rule.

Barbara Federlin, WDNR (at Madison meeting) (E.1): Total coliform violations, even without the presence of fecal coliform, necessitate a boil water notice.

Response: EPA has decided to keep total coliform MCL violations in Tier 2. EPA defines a Tier 1 violation as one with a significant potential to have serious adverse effects on human health as a result of short term exposure. Most TCR violations (without supporting evidence) are not sufficiently strong or predictable indicators of *significant* potential of risk from short-term exposure. Most TCR violations with no evidence of fecal contamination clearly do not provide sufficient evidence indicating significant potential of short-term health risk. Moving total coliform MCLs to Tier 1 would result in an increase in false alarms and might cause the public to ignore subsequent notices for fecal coliform or *E. coli* MCL violations. The rule still requires that notice be given as soon as practical and gives primacy agencies the authority to elevate such violations to Tier 1 if they think the violation presents a health threat. EPA does have a means to determine whether a positive test for total coliform is an emergency: Tier 1 notice is required whenever a system fails to test for fecal coliform or *E. coli* after repeat samples test positive for coliform.

Bob Baumeister, WDNR (at Madison meeting) (E.1): Why were total coliform violations assigned to Tier 2 rather than Tier 1?

Response: EPA has decided to keep total coliform MCL violations in Tier 2. EPA defines a Tier 1 violation as one with a significant potential to have serious adverse effects on human health as a result of short term exposure. Most TCR violations (without supporting evidence) are not sufficiently strong or predictable indicators of *significant* potential of risk from short-term exposure. Most TCR violations with no evidence of fecal contamination clearly do not provide sufficient evidence indicating significant potential of short-term health risk. Moving total coliform MCLs to Tier 1 would result in an increase in false alarms and might cause the public to ignore subsequent notices for fecal coliform or *E. coli* MCL violations. The rule still requires that notice be given as soon as practical and gives primacy agencies the authority to elevate such violations to Tier 1 if they think the violation presents a health threat. EPA does have a means to determine whether a positive test for total coliform is an emergency: Tier 1 notice is required whenever a system fails to test for fecal coliform or *E. coli* after repeat samples test positive for coliform.

Jon Standridge, Wisconsin State Lab of Hygiene (at Madison meeting) (E.1): The treatment of the coliform issue in the handbook and the rule is good--it does not "cry wolf."

Response: EPA agrees and has retained this approach in the final rule.

Topic 6: 141.202 (b) When is the Tier 1 public notice to be provided? What additional steps are required?

141.202 (b)(1) Provide notice in 24 hours

Comments:

Massachusetts DEP (1.08): Tier 1 violations should require an additional notice within 14 days either through a newspaper, posting, or hand delivery, as in the current rule. Posting a notice within 24 hours may not allow sufficient time for a public water system to give detailed information about the violation, including possible sources of contamination or long term remediation steps. A follow-up posting will provide the public with a clearer picture of what the violation was, how it occurred, and any details concluded after the original notice was posted.

Response: EPA disagrees. The Agency considered requiring an additional notice following 24-hour Tier 1 violations. Such notices would allow systems time to gather more complete information about the violation and report this information to consumers. Additional notices would also compensate for cases where electronic media did not adequately provide notice to consumers. However, EPA felt that automatically requiring a second notice may actually encourage systems to not issue as complete a notice as possible during the first 24 hours. In addition, it would create an additional tracking burden for primacy agencies. Lastly, the need for additional notices and the content requirements of each notice would vary based on the situation. For this reason, EPA decided that the authority primacy agencies have to set additional notice requirements during consultation with systems is adequate.

City of Glendale (AZ), Department of Public Works (1.15): The proposed rule requires systems to provide Tier 1 public notification in a form and manner reasonably calculated to reach all persons served within 24 hours. In order to reach all persons served, water systems are to use at a minimum broadcast media, posting notices in conspicuous locations, or hand delivery of notices. A water system can only ensure the content of the message (i.e., that the mandatory language is included) if the notice is delivered in written form. The time required to prepare and print notices for posing, [sic] hand delivery or inclusion in a newspaper is likely to take more than 24 hours, particularly for large systems. . .

We also recommend that the rules allow large water systems to complete the notification process within 72 hours after first discovery of the violation, if the activity causing the violation is stopped soon after its discovery (e.g., within an hour after discovery).

Response: 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. EPA recognizes that systems may have difficulty preparing notices. For these reasons, EPA has developed a handbook for water systems that includes templates for violations in Tier 1, as well as advice on working with the media. EPA intends to expand its treatment of electronic notices in the final version of the *Public Notification Handbook*.

Missouri Department of Natural Resources (1.13): The reduction in time allowed from 72 to 24 hours for Tier 1 violations is a positive step. . . . The phrase "as soon as practical" needs to be replaced with "as soon as possible".

Response: EPA agrees and has retained the 24-hour time period in the final rule. EPA also has changed the phrase "as soon as practicable" to "as soon as practical."

City of Phoenix, Water Services Department (1.18): The requirement to notify within 24 hours of being notified of an exceedance will be challenging.

Response: 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. EPA recognizes that systems may have difficulty preparing notices. For these reasons, EPA has developed a handbook for water systems that includes templates for violations in Tier 1, as well as advice on working with the media. EPA intends to expand its treatment of electronic notices in the final version of the *Public Notification Handbook*.

San Francisco Public Utilities Commission (1.22): While the SFPUC makes every effort to communicate to the public as expeditiously as possible, the proposed 24-hour response time for Tier 1 violations may short-circuit the emergency response process and could potentially result in misleading or inaccurate information presented to the public. The current 72-hour notification period is appropriate for the PWS to collect and interpret information on a potential violation, involve key technical and administrative personnel, and contact the regulatory and public health agencies before the decision to release a public notice is reached. The SFPUC feels that public safety is best served by the existing 72-hour public notification deadline with utilities making every attempt to meet a 24-hour deadline following the steps above. The proposed 24-hour notification deadline may compromise the intent of the rule by not allowing adequate time to assess potentially sensitive public health issues, and, in some instances, creating unnecessary panic by releasing incomplete information.

The EPA may want to consider granting the primacy agencies more flexibility regarding requirements to comply with the proposed 24-hour deadline. Perhaps staging the public notices would be more effective. For instance, preliminary notice of a Tier 1 violation could be given

within 24 hours of the violation with follow-up information via additional postings and media coverage within 72 hours.

Response: 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. EPA recognizes that systems may have difficulty preparing notices. For these reasons, EPA has developed a handbook for water systems that includes templates for violations in Tier 1, as well as advice on working with the media. EPA intends to expand its treatment of electronic notices in the final version of the *Public Notification Handbook*.

Regarding “staging,” EPA considered requiring an additional notice following 24-hour Tier 1 violations. Such notices would allow systems time to gather more complete information about the violation and report this information to consumers. Additional notices would also compensate for cases where electronic media did not adequately provide notice to consumers. However, EPA felt that automatically requiring a second notice may actually encourage systems to not issue as complete a notice as possible during the first 24 hours. In addition, it would create an additional tracking burden for primacy agencies. Lastly, the need for additional notices and the content requirements of each notice would vary based on the situation. For this reason, EPA decided that the authority primacy agencies have to set additional notice requirements during consultation with systems was adequate.

Natural Resources Defense Council (1.24): We are pleased that EPA has decided to follow the SDWA statutory mandate to shorten the length of time for public notification on Tier One violations from 72 hours to 24 hours. This amendment complies with the statutory intent to give consumers timely information on violations and takes into account the possibility of potentially serious adverse health effects.

Response: EPA agrees and has retained this approach in the final rule.

Carroll County (MD) Health Department Bureau of Environmental Health (1.27): Tier 1 public notices will now need to be distributed to consumers within 24 hours of notification of the violation. This was formerly 72 hours. This places additional pressure on the systems and local health departments. Local Health may have difficulty meeting this requirement due to time involved in preparing notices and making arrangements to post facilities that are not always open for business. Often, it is more than 24 hours before we can reach an individual.

Response: 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. EPA recognizes that systems may have difficulty preparing notices. For these reasons, EPA has developed a handbook for water systems that includes templates for violations in Tier 1, as well as advice on working with the media. EPA intends to expand its treatment of electronic notices in the final version of the *Public Notification Handbook*.

Iowa Department of Natural Resources (1.30): The use of the word "practicable" in this section, and throughout the proposed rule, seems unnecessarily complicating and awkward. The simpler words "possible" or "practical" or "feasible" would usually suffice as replacements. "Provide a public notice as soon as practicable but no later than 24 hours after the system learns of the violation;" could be "Provide a public notice as soon as possible but no later than 24 hours after the system learns of the violation." The IDNR recommends elimination of the word "practicable" throughout the entire document.

Response: EPA agrees with the commenter on the language revision. In the final rule, the phrase "as soon as practicable" has been replaced with "as soon as practical."

Utah DEQ, Division of Drinking Water (1.31): Utah supports the shorter time frame for public notice for violations involving serious public health effects with short term exposure.

Response: EPA agrees and has retained this approach in the final rule.

Lehigh County (PA) Authority (1.38): Notices regarding Tier 1 violations, like all other notices, must contain the 10 basic elements listed in the draft handbook, according to the Proposed Rule. However, mandatory delivery methods (radio, television, posting or hand delivery) may not allow all elements to be included. For example, large systems will have to rely on television or radio to meet the requirements of the Rule because posting and hand delivery would not be practical or even possible within 24 hours. Unless the water utility purchases advertising space, which would take longer than 24 hours to secure, the utility cannot ensure that all 10 elements will be included in the radio or television announcement, especially because much of the required language is lengthy.

Response: 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. EPA recognizes that systems may have difficulty preparing notices. For these reasons, EPA has developed a handbook for water systems that includes templates for violations in Tier 1, as well as advice on working with the media. EPA intends to expand its treatment of electronic notices in the final version of the *Public Notification Handbook*.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): CWD agrees that a 24-hour time frame is sufficient to get notice of the problem to the broadcast media or directly to customers.

Response: EPA agrees and has retained this approach in the final rule.

City of Chandler (AZ), Office of the City Attorney (1.41): There is no distinction made between on-going violations and violations that are cured within 24 hours. For example, a public water system could immediately disconnect or close a well that had a high nitrate reading to eliminate any on going water quality issue. It should also be noted that the sampling frequency for nitrate is quarterly and a "violation" might not be determined until after a confirmation sample is analyzed. Further, the proposed requirement to notify the public within 24 hours of violation does not seem to track well with the monitoring requirements - particularly under circumstances where the basis for any violation will have been cured by the time the notice is provided. Reducing the current 72-hour time to the proposed 24 hours under these circumstances may also unnecessarily stress public water system resources if any issue occurs on a weekend or holiday. As a practical matter, while public water systems will do everything possible to provide notice in less than 24 hours, there may be no need to set up an additional "violation" or "penalty" if notice is given 30 hours later where the basis for the violation was addressed before any notices could have been given. As such, we believe the current requirement to provide notice as soon as possible, but not later than 72 hours after learning of the violation should be retained except where the violation or situation is on-going and will still have the potential to have serious adverse effects on human health at the time the notice would be provided. At the very least there should be an exception provision to the strict 24-hour time frame for "good cause."

Response: 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. EPA recognizes that systems may have difficulty preparing notices. For these reasons, EPA has developed a *Public Notification Handbook* for water systems that includes templates for violations in Tier 1, as well as advice on working with the media. EPA intends to expand its treatment of electronic notices in the final version of the handbook. On the commenter's point about extensions for violations that have returned to compliance before the notice was due, EPA does not believe that a quick return to compliance negates the need for 24-hour notice. In their notices, systems should explain that the violations has been resolved. EPA also believes that consumers should be notified in such situations because the situation may recur. Consumers have a right to know about the quality of their drinking water, including whether they were exposed to contaminants. Regarding the suggestion for an exception provision, EPA intends to recommend in its primacy guidance that states use enforcement discretion based on the seriousness of the violation.

American Dental Association (1.42): The ADA agrees with the EPA on the need for public water systems to provide public notice of violations. However, the Association believes that dental offices should be notified as soon as possible after the system learns of such violations, as opposed to allowing up to 24 hours to make the necessary notification.

Many dental offices use drinking water from public water systems to supply dental units, other instruments, and equipment to deliver water for use in dental procedures. The Centers for Disease Control and Prevention's (CDC) Division of Oral Health has recommended that water from public systems not be used in dental offices during boil-water advisories (see attached).

Dental patients use water from the public water system while rinsing. If dental offices are given timely notice, water from alternative sources, such as bottled or distilled water, can be used. However, many dental procedures cannot be performed during the advisory as they make use of the public water system. Therefore, it is imperative that dental offices be notified as soon as possible when these water violations occur. Dental assistants and hygienists also use water from the public water supply for hand washing. Given timely notice, these workers could use antimicrobial-containing products that do not require water for use, such as alcohol-based hand rubs, until the boil-water notice is canceled.

By providing dental offices with timely notice of violations, we can protect patients, dentists, and dental staff from adverse health effects caused by short term contaminated water situations. The ADA strongly recommends that dental officials be notified as soon as possible when Tier 1 violations of the National Primary Drinking Water Regulations occur.

Response: EPA considered amending the rule to require specific notification of health professionals. However, water systems cannot be expected to have an up-to-date list of all dentists and doctors on hand, and may not have the labor resources to specifically target them. EPA believes that primacy agencies have the authority to require such notification as part of the consultation requirement, and it intends to recommend in the *Public Notification Handbook* that systems make an effort to notify health professionals to the best of their ability.

Akron (OH) Public Utilities Bureau (2.4): APUB concurs with reservation with the reduction from 72 hours to 24 hours for a Tier 1 public notice. This shortened time frame will sometimes force public notices without all of the facts being gathered. Particularly on weekdays and holidays it may be impossible to immediately collect all the information as to what happened the day the sample was taken. There will be minimal time for corrective action prior to public notice. Water distribution flow patterns may need to be analyzed to determine the area affected by a boil water alert. Communications between the water system supervisory, lab, engineering, maintenance and administrative personnel and EPA officials may take several hours before the issues of the public notice are resolved. If the primacy agency could be given some discretion as to an extension of the public notice, unnecessarily large areas of public notice may be avoidable.

Response: 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. EPA recognizes that systems may have difficulty preparing notices. For these reasons, EPA has developed a handbook for water systems that includes templates for violations in Tier 1, as well as advice on working with the media. EPA intends to expand its treatment of electronic notices in the final version of the *Public Notification Handbook*.

Robb Pattison, City of Wauwatosa (at Madison meeting) (E.1): 24 hours was not enough time to give Tier 1 notice, especially via hand delivery.

Response: 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. EPA recommends that operators plan ahead for 24-hour notification; the *Public Notification Handbook* provides suggestions for doing this. EPA wishes to clarify that hand delivery is not a required method; systems may choose from electronic media, hand delivery, or posting, and may use whatever additional methods are calculated to reach all persons served. In most cases, hand delivery will be used at relatively small systems or systems where only a portion of the service area is affected.

Unidentified participant at DC meeting (E.2): 24 hour Tier 1 notification requirement is a positive change from the current PN rule.

Response: EPA agrees and has retained this requirement in the final rule.

Richard Kolish, City of Baltimore (at DC meeting) (E.2): Twenty-four hours is too long a deadline for Tier 1 notice; the Maryland Department of the Environment requires notice be given by the end of the day. If a system has 24 hours to distribute a notice, it might wait that long hoping that the violation would be resolved.

Response: EPA hopes that most systems will provide notices earlier if at all possible, since the rule language requires notices “as soon as practical, but no later than 24 hours after the system learns of the violation.”

Peter Lukens, North Wales Water Authority (at Allentown meeting) (E.3): For a Tier 1 notice, 24 hours does not allow time to distribute a notice by any means other than radio or TV. Shortening the deadline from 72 hours to 24 hours will eliminate the option of placing advertisements in newspapers.

Response: 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. EPA recognizes that systems may have difficulty preparing notices. For these reasons, EPA has developed a handbook for water systems that includes templates for violations in Tier 1, as well as advice on working with the media. EPA intends to expand its treatment of electronic notices in the final version of the *Public Notification Handbook*.

Alan Friedman, Los Cerros Water Company (at Phoenix meeting) (E.4): The 24 hour deadline for Tier 1 notification is difficult for small systems to meet. EPA should consider giving small systems the option of shutting down their operations and delivering water to their customers instead. Public notices can cause false illnesses.

Response: EPA disagrees with the commenter. A Tier 1 public notice does not necessarily need to be a “boil water” notice. Systems are required to distribute an alert, regardless of whether the risk was addressed so that people are aware of the violation. EPA hopes that systems take whatever immediate action is necessary, including shutting down their operations and delivering water to their customers, to address the risk posed by the violation.

Trigger Point for Tier 1 Deadline

Comments:

Bridgeport (CT) Hydraulic Company (1.12): BHC suggests that the language in the proposed rule be modified to clearly indicate when the 24 hour clock begins FOR EACH OF THE TIER 1 CONTAMINANTS (Fecal Coliform, Nitrate, Nitrite, Nitrate + Nitrite, Chlorine Dioxide, and Waterborne Disease Outbreak).

We believe it would be helpful for EPA to provide examples of when the notification should start for each of the Tier 1 contaminants. For example, the Total and Fecal bacteria tests have presumptive and confirmatory steps. The presumptive result is available 24 hours after sample collection, but the confirmed result may take several more days. Is the intent of the rule that notification proceed based on the presumptive result (risking a potential false positive that does not confirm) or on the confirmed result (could delay notification several days)? Examples or clarification of these type of issues would greatly assist water suppliers or the primacy agency in determining when to first notify the public for these type Tier 1 violations.

Response: The definition of an MCL or MRDL differs for each violation, but in most cases a confirmation or repeat sample must be positive for there to be a violation. Systems should check their state’s regulations for each type of contaminant or ask their primacy agency for this information. Under federal

regulations, the triggers for MCLs are generally described with the monitoring requirements. For a waterborne disease outbreak, the trigger is the point in time when the PWS becomes aware of the violation or situation.

Missouri Department of Natural Resources (1.13): Use of the phrase "after the public water system learns of the violation or situation" is a concern when dealing with those relatively few systems that test the boundary of what is reasonable. Most of the time DNR notifies the PWS of the violation, rather than the other way around. Some systems purposefully fail to learn of violations by refusing mail and ignoring messages left on answering machines, etc. The rule needs to be written so the PN clock starts ticking at the time the violation or situation is determined to have occurred whether it is by the PWS or primacy agency. We suggest this phrase be replaced by "after a violation or situation has been identified by the public water system or primacy agency."

Response: EPA has decided not to modify the language. 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 would interpret "learns" to include situations where the system refused to "learn" of the violation by ignoring mail or telephone messages. EPA wishes to re-state that the trigger point for notification is when the system learns that the violation exists, 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). In such cases, EPA encourages systems to "gear up" for preparing a notice by reviewing the PN requirements or *Public Notification Handbook*.

American Water Works Association (1.14): AWWA recommends that the final regulation clearly state when the clock for the 24 hour notice begins. This clock should begin when the utility receives notification of the Tier 1 violation, i.e., when they receive the monitoring data from their internal laboratory or an outside contract laboratory, or they are so informed by their primacy agency. The key point in time is when the utility has the knowledge of the Tier 1 violation. Every party involved in the public notification process (utilities, laboratories, primacy agencies, and EPA) need to clearly understand the communication process, particularly the transmittals of laboratory data. In the end, the primacy agency needs to clearly communicate to each of the utilities exactly when the 24-hour period begins, based on specific laboratory arrangements (internal, outside, state). Additionally, the utilities need to make appropriate arrangements when key personnel are unavailable, i.e., in a meeting, on vacation, etc.

Response: EPA has decided not to modify the language. 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 re-state that the trigger point for notification is when the system learns

that the violation exists, 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). In such cases, EPA encourages systems to “gear up” for preparing a notice by reviewing the PN requirements or *Public Notification Handbook*. In the case of systems that use an independent laboratory, this means that the 24 hours starts when the laboratory notifies the system that a violation has occurred.

Massachusetts Water Resources Authority (1.19): [T]he rule should clarify when the timing of the twenty-four hour notice period begins.

Response: EPA has decided not to modify the language. 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 re-state that the trigger point for notification is when the system learns that the violation exists, 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). In such cases, EPA encourages systems to “gear up” for preparing a notice by reviewing the PN requirements or *Public Notification Handbook*.

Association of State Drinking Water Administrators (1.23): ASDWA supports the 24-hour reporting requirement for Tier 1 notices but strongly suggests that the language be strengthened to clarify that the “reporting clock” begins when the system is notified (as opposed to when the sample was taken or when the lab completed the analysis). Language should also emphasize that this “clock” is not dependant on the requirement for systems to consult with the primacy agency. Perhaps “on the next business day” could be added to the consultation statement to ensure that systems understand the difference between the two reporting requirements.

Response: EPA has decided not to modify the language. 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 would interpret “learns” to include situations where the system refused to “learn” of the violation by ignoring mail or telephone messages. EPA wishes to re-state that the trigger point for notification is when the system learns that the violation exists, 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). In such cases, EPA encourages systems to “gear up” for preparing a notice by reviewing the PN requirements or *Public Notification Handbook*. In the case of systems that use an independent laboratory, this means that the 24 hours starts when the laboratory notifies the system that a violation has occurred.

EPA disagrees with the commenter's recommendation to change to the rule language on the consultation requirement. EPA believes the requirement is clear as written. EPA reaffirms the preamble language, which says the consultation is independent of the public notice. That is, the 24-hour deadline must be met, regardless of whether the system actually makes contact with the primacy agency.

Natural Resources Defense Council (1.24): We urge the agency to specify, however, that the 24 hours should run from the time the violation is detected. No extensions of time should be made for failure to notify relevant parties in a timely fashion. We ask that EPA emphasize that notice must be distributed *within* the mandated 24 hour period and no later.

Response: The point at which a violation occurs is specific to each contaminant (a monthly average, result of confirmation sample, etc.). The regulatory "clock" starts when the system learns of the violation. EPA requires that Tier 1 notice be given as soon as practical, but no later than 24 hours after it learns of the violation. EPA wishes to re-state that the trigger point for notification is when the system learns that the violation exists, 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). In such cases, EPA encourages systems to "gear up" for preparing a notice by reviewing the PN requirements or *Public Notification Handbook*.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania objects to the language in Sections 141.202(b), 141.203(b) and 141.204(b) that deals with issuing a Tier 1, 2 or 3 PN, respectively after the system learns of the violation. The proposed language in each case is imprecise and subject to various interpretations as to when a system constructively learned of a violation. The use of the phrase in 141.202(b) is not as critical as it should be relatively easy to call the systems laboratory to find out when they notified the system. However, weeks, months or a year later, it may be very difficult to track down when the system was notified to ensure that PN was issued within the prescribed time limit. Pennsylvania recommends, for consistency, changing the wording in all three sections to after the system is notified by their analytical laboratory or otherwise learns of the violation. This allows a state that does not personally collect and analyze a systems samples to more precisely determine when a supplier had constructive knowledge of the violation. [*Note: comment is also in Section 141.204(b)*]

Response: EPA disagrees with the proposed change and believes the rule is adequate as written. EPA believes that the rule covers all possible circumstances by which the system may become aware of the violation. The proposed language appears to offer more guidance for a specific situation. EPA will provide advice on specific situations in the primacy guidance and the *Public Notification Handbook*. EPA would interpret "learns" to include situations where the system refused to "learn" of the violation by ignoring mail or telephone messages. EPA wishes to re-state that the trigger point for notification is when the system learns that the violation exists, 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). In such cases, EPA encourages systems to “gear up” for preparing a notice by reviewing the PN requirements or *Public Notification Handbook*. In the case of systems that use an independent laboratory, this means that the 24 hours starts when the laboratory notifies the system that a violation has occurred.

Association of Metropolitan Water Agencies (1.35): The preamble should clearly state that the 24 hour notification period begins when the public water system learns of a violation.

Response: EPA agrees and believes this requirement is clear in the rule and preamble. The trigger point for notification is when the system learns that the violation exists.

Boston Water and Sewer Commission (1.37): The Commission recommends that the final regulation state that the clock for the 24-hour notice begins with the confirmation of a violation from a second sample. This will ensure that there is indeed a violation rather than a single contaminated sample.

Response: EPA disagrees with the proposed change and believes the rule is adequate as written. EPA believes that the rule covers all possible circumstances by which the system may become aware of the violation. The proposed language appears to offer more guidance for a specific situation. EPA will provide advice on specific situations in the primacy guidance and the *Public Notification Handbook*.

Lehigh County (PA) Authority (1.38): According to the Proposed Rule, public notification for Tier 1 violations is required within 24 hours. The proposed rule does not specify the trigger point at which time the 24-hour period officially begins. This lack of specificity may pose timing concerns for many utilities, especially those who rely on an independent laboratory to inform them of MCL violations.

Response: EPA believes that the rule is clear as written. It states that public notice must be provided as soon as practical but no later than 24 hours after the system learns of the violation. In the case of systems that use an independent laboratory, this means that the 24 hours starts when the laboratory notifies the system that a violation has occurred.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): The time frame should start when the water system receives the test results, not when the sample is taken.

Response: EPA agrees. The trigger point for Tier 1 notification begins when the system learns of the violation. EPA believes this is clear in the rule and preamble.

141.202 (b)(2) Consultation with Primacy agency

EPA is requesting comment on the Tier 1 public notification requirements, in particular the list of violations requiring such a notice, the new consultation process now proposed in lieu of more prescriptive EPA requirements, EPA's interpretation of the statute under 1414(c)(2)(C) which allows EPA to require public water systems to consult with the primacy agency, and the revised requirements for the form and manner of the Tier 1 notices. (64 FR 25975)

Comments:

Indiana DEM (1.04): [W]e believe that it is prudent for the systems to consult with the primacy agency. However, there will need to be stipulations in the federal rule so that the system will not incur a violation if they cannot consult with the primacy agency within 24 hours (i.e., a violation occurs on a Friday evening and they cannot consult with the primacy agency until Monday). It may be possible to require the notice within 24 hours of the violation with consultation with the primacy agency required by the end of the next business day.

Response: EPA considered changing the consultation deadline to the end of the next business day to account for the possibility of a violation occurring on a weekend or holiday. However, EPA decided that the proposed language requiring the system to “initiate consultation” within 24 hours was sufficient. By using the phrase “initiate consultation,” EPA means that the system must contact the primacy agency but not necessarily discuss the situation if the state was unavailable. EPA intends to clarify its interpretation in the *Public Notification Handbook* as well as in primacy agency implementation guidance. Most states now have voice mail or an emergency hotline, so systems can at least leave a message.

City of Anaheim, Public Utilities Department (1.05): The Department supports the EPA's proposal to set minimum required procedures for water systems to follow and the requirement that water systems consult the primacy agency to ensure that appropriate measures are taken.

Response: EPA agrees that consultation is necessary to ensure that an accurate notice is provided to the people served by the system and has retained this requirement in the final rule.

Des Moines Water Works (1.07): DMWW believes that EPA should clarify the requirement that a system distribute a public notice "no later than 24 hours after the public water system learns of the violation or situation." The concern surrounding this requirement comes from the inability to reach primacy agency representatives or the media on weekends. It is unclear that if a violation were to occur on a weekend day whether leaving a message with the primacy agency or media satisfactorily meets the requirement of the new rule?

Response: EPA considered changing the consultation deadline to the end of the next business day to account for the possibility of a violation occurring on a weekend or holiday. However, EPA decided that the proposed language requiring the system to “initiate consultation” within 24 hours was sufficient. By using the phrase “initiate consultation,” EPA means that the system must contact the primacy agency but not necessarily discuss the situation if the state was unavailable. EPA intends to clarify its interpretation in the *Public Notification Handbook* as well as in primacy agency implementation guidance. Most states now have voice mail or an emergency hotline, so systems can at a minimum leave a message. The notice must still be issued within 24 hours whether or not the system has a consultation with the primacy agency.

Missouri Department of Natural Resources (1.13): "Initiate consultation" needs to be replaced with "Consult". DNR usually notifies systems of E. coli positive results, so the systems cannot technically initiate the consultation. "Consult" will work no matter who notifies whom about the violation.

Response: EPA decided that the proposed language requiring the system to “initiate consultation” within 24 hours was sufficient. By using the phrase “initiate consultation,” EPA means that the system must contact the primacy agency but not necessarily discuss the situation if the state was unavailable. Most states now have voice mail or an emergency hotline, so systems can at least leave a message. The intent of this requirement is for the system operator and primacy agency staff to discuss the violation, regardless of who initiates the call. EPA reiterates that the consultation with the primacy agency is independent of the public notice itself; the notice must be issued within 24 hours, even if the system is unable to contact anyone at the primacy agency. EPA intends to clarify its interpretation in the *Public Notification Handbook* as well as in primacy agency implementation guidance.

City of Phoenix, Water Services Department (1.18): Tier 1 violations are acute violation [sic] and require immediate action, however, 24 hours does not take into account if the water system learns about the violation at close of business day on a Friday. ADEQ (primacy agency) does not work on weekends/holidays; which makes it difficult to inform them within 24 hours, if the violation was to happen Friday afternoon. The current rule requiring notice within 72 hours for acute violation allows sufficient time under these circumstances.

Response: EPA considered changing the consultation deadline to the end of the next business day to account for the possibility of a violation occurring on a weekend or holiday. However, EPA decided that the proposed language requiring the system to “initiate consultation” within 24 hours was sufficient. By using the phrase “initiate consultation,” EPA means that the system must contact the primacy agency but not necessarily discuss the situation if the state was unavailable. EPA intends to clarify its interpretation in the *Public Notification*

Handbook as well as in primacy agency implementation guidance. Most states now have voice mail or an emergency hotline, so systems can at least leave a message. The notice must still be issued within 24 hours whether or not the system has a consultation with the primacy agency.

Massachusetts Water Resources Authority (1.19): The proposed rule presents an opportunity to encourage Public Water Suppliers to coordinate action with Public Health Agencies. It is important that consumers receive consistent information from the water supplier and the public health officials on appropriate actions to take if there are potential health issues associated with a water quality problem. The PWS and Primacy Agency should include consultation with public health agencies or officials in determining the scope and content of notifications.

The proposed rule requires the PWS to consult with the Primacy Agency within 24 hours of the time when the PWS first learns of the violation, but does not include a requirement that the Primacy Agency be available for such consultation on a “twenty-four hour-seven day” basis throughout the year. The regulations should provide some flexibility to account for problems of availability of the primacy agency particularly on weekends, holidays and time after working hours.

Response: EPA agrees that coordination with health agencies that have expertise in epidemiology, risk communication, and outreach is a good idea. EPA plans to stress the importance of such coordination in its primacy agency implementation guidance. EPA considered changing the consultation deadline to the end of the next business day to account for the possibility of a violation occurring on a weekend or holiday. However, EPA decided that the proposed language requiring the system to “initiate consultation” within 24 hours was sufficient. By using the phrase “initiate consultation,” EPA means that the system must contact the primacy agency but not necessarily discuss the situation if the state was unavailable. EPA intends to clarify its interpretation in the *Public Notification Handbook* as well as in primacy agency implementation guidance. Most states now have voice mail or an emergency hotline, so systems can at least leave a message. The notice must still be issued within 24 hours whether or not the system has a consultation with the primacy agency.

Oregon Health Division (1.20): [T]he proposed consultation process is appropriate. Some situations such as a boil water warning become rather complicated, and even a good handbook is not adequate to assess case- by- case situations.

Response: EPA agrees that consultation is a good way to address the specifics of a Tier 1 violation and has retained this requirement in the final rule. The notice must still be issued within 24 hours whether or not the system has a consultation with the primacy agency.

Carroll County (MD) Health Department Bureau of Environmental Health (1.27): The proposal requires the system to initiate contact with the primacy agency (for transient noncommunity water systems that is the local health department) within the 24 hours allotted to post a tier 1 notice. It does not take into account that some local health departments initiate contact with the system to inform them of the violation.

Response: EPA recognizes that different systems learn of violations differently. The language “initiate consultation” was chosen to stress that systems have the responsibility to make contact. The intent of this requirement is for the system operator and primacy agency staff to discuss the violation, regardless of who initiates the call. EPA reiterates that the consultation with the primacy agency is independent of the public notice itself; the notice must be issued within 24 hours, even if the system is unable to contact anyone at the primacy agency.

Virginia Department of Health (1.29): The 24 hour consultation requirement is a good approach for allowing the State to establish Tier 1 repeat notice requirements, provided EPA will indeed allow States to freely utilize its discretion in this area.

Response: EPA agrees that consultation is a good way to allow states to set additional public notice requirements. States will have discretion but they will need to describe their procedures when they apply for primacy.

Association of Metropolitan Water Agencies (1.35): The proposed rule would require systems to initiate consultation with the State primacy agency with 24 hours for Tier 1 violations, but contains no special primacy requirement for primacy agencies to be available for consultations 24 hours per day, seven days per week, 52 weeks per year. Reaching many of the State primacy agencies after working hours, or on weekends or holidays can be difficult if not impossible. This needs to be discussed and accounted for in any final rule. AMWA believes that consultation with the States should be within 24 hours unless weekends and/or holidays are involved and the State primacy authority is not available for consultations. In this case, the rule should allow for the present 72 hour period.

Response: EPA considered changing the consultation deadline to the end of the next business day to account for the possibility of a violation occurring on a weekend or holiday. However, EPA decided that the proposed language requiring the system to “initiate consultation” within 24 hours was sufficient. By using the phrase “initiate consultation,” EPA means that the system must contact the primacy agency but not necessarily discuss the situation if the state was unavailable. EPA intends to clarify its interpretation in the *Public Notification Handbook* as well as in primacy agency implementation guidance. Most states now have voice mail or an emergency hotline, so systems can at least leave a message. The notice must still be issued within 24 hours whether or not the system has a consultation with the primacy agency.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): Consultation with the State primacy agency within 24 hours may not be possible if the primacy agency does not staff 24 hours a day, seven days a week, including holidays. The water system should contact their primacy agency as soon as possible, but within 72 hours.

Response: EPA considered changing the consultation deadline to the end of the next business day to account for the possibility of a violation occurring on a weekend or holiday. However, EPA decided that the proposed language requiring the system to “initiate consultation” within 24 hours was sufficient. By using the phrase “initiate consultation,” EPA means that the system must contact the primacy agency but not necessarily discuss the situation if the state was unavailable. EPA intends to clarify its interpretation in the *Public Notification Handbook* as well as in primacy agency implementation guidance. Most states now have voice mail or an emergency hotline, so systems can at least leave a message. The notice must still be issued within 24 hours whether or not the system has a consultation with the primacy agency.

141.202 (b)(3) Additional PN requirements

EPA is requesting comment on the Tier 1 public notification requirements, in particular the list of violations requiring such a notice, the new consultation process now proposed in lieu of more prescriptive EPA requirements, EPA’s interpretation of the statute under 1414(c)(2)(C) which allows EPA to require public water systems to consult with the primacy agency, and the revised requirements for the form and manner of the Tier 1 notices. (64 FR 25975)

Comments:

City of Chandler (AZ) Office of the City Attorney (1.41): The provision at 141.202(b)(3) regarding "additional public notification requirements are too vague and open-ended. It is unclear how disagreements during "consultation" are to be resolved, whether, notwithstanding the consultation process, the primacy agency can direct the timing, form, manner or frequency of any additional notices (see Section 141.209) and what standards are to be utilized for establishing any additional public notification requirements. Other sections use statements such as "unless directed otherwise by the primacy agency" (141.203(c)(1)) or "unless the primacy agency determines - that specific circumstances warrant a different repeat notice frequency" (141.203.(b)) to provide primacy agency authority to modify requirements. While that approach raises issues as well (what standards will be used by the primacy agency and how, can a public water system challenge any such determination made?), it is certainly cleaner than establishing all requirements through the "consultation with the primacy agency" approach set forth in Section 202(b)(3).

Response: EPA has decided to maintain the consultation provision as it is in the proposed rule. The Agency believes that this is less burdensome than

automatically requiring subsequent or update notices, repeat notices for ongoing violations, or closure notices. Primacy agencies may feel the need to require additional notices to address deficiencies in the initial notice or may feel that the public should be informed when the violation is resolved. In addition, if the consultation is complete early in the PN process, primacy agencies may approve notices before distribution, preventing the need for some additional notices. EPA does not believe that added precision to the PN rule is appropriate. It is EPA's intent to give primacy agencies discretion to address the specifics of every case in determining whether additional actions are needed. Regarding water systems' ability to "challenge" the determination of the primacy agency, EPA does not believe that a formalized dispute resolution process is needed or even appropriate. Any dispute resolution processes over PN requirements will be established, if at all, by the primacy agency.

Des Moines Water Works (1.44): DMWW supports EPA's decision to give the primacy agency this authority [the authority to require follow-up notices]. Educating the public using updated information demonstrates that the system is working to correct the violation and helps focus community attention on the utility correction of the problem.

Response: EPA agrees with the comment and has retained this provision in the final rule.

Topic 7: 141.202 (c) What is the form and manner of the public notice?

EPA is requesting comment on the Tier 1 public notification requirements, in particular . . . the revised requirements for the form and manner of the Tier 1 notices. (64 FR 25975)

Comments:

Mike Mecke (1.01): I am in favor of requiring all public water purveyors to provide notice within 24 hrs. of their first knowledge of a violation. This may be thru [sic] TV, Radio, Newspaper, Letters and Internet Posting - either by one chosen as most effective to their customers or several methods preferably. With an Executive Summary clearly defining any health hazards. Must be released to all local news media regardless.

Response: Mail, newspapers, and web site posting were not designated as required methods for Tier 1 because in most cases they are unlikely to reach the affected population within 24 hours. Such methods may be used as secondary methods if they do reach persons served within 24 hours. EPA allows primacy agencies to designate another delivery method in writing for use in advance or on a case-by-case basis. Many small systems may not have access to all forms of news media, and the media may not publish stories about violations at very small systems such as gas stations or campgrounds. For this reason, EPA is not requiring release to all news media but is allowing the use of hand delivery and posting if such methods reach all persons served. The rule will require the use of brief mandatory health effects language for all violations.

Consumer Federation of America (1.11): The delivery of a Tier 1 notice, as proposed, "requires water systems to use, as a minimum, appropriate broadcast media, **posting of the notice in conspicuous locations and/or** hand delivery to residences or businesses served by the system." We are concerned that posting the Tier 1 notice in conspicuous locations would rarely be an effective way of communicating quickly with all those served by a water system. Instead, systems should be required to use "appropriate broadcast media" for delivery of Tier 1 notices and should be strongly encouraged to supplement that notification by posting of the notice in conspicuous locations and/or delivering it by hand. Where broadcast media can not be reasonably expected to reach all the people served, the water system should be required to use direct delivery unless it is clear that it will be equally effective to post the notice in several conspicuous locations frequented by all those served.

Response: EPA has decided not to modify any of the proposed methods of delivery; however, it agreed to add another option allowing systems to use a primary method different from media, posting, or hand delivery if the primacy agency preapproves it or approves it during consultation. This is in response to comments requesting permission to use other methods such as phone dialers, newspapers, or mail. Regarding the commenter's concern about posting, EPA has

reworded the final rule to require posting of the notice in conspicuous locations throughout the distribution system. EPA asserts that systems have a regulatory obligation to do whatever is needed to reach all persons served, not merely the minimum necessary to distribute a notice.

Missouri Department of Natural Resources (1.13): This is an excellent measure to ensure notification of each Tier 1 violation is suited to the specific situation. In the past electronic media notification has been the cornerstone for acute violations; this has proven to be woefully ineffective. People who did not hear about boil orders until days after they were issued will call DNR and exclaim, "We were at work all day and couldn't listen to the radio or watch TV. Why didn't the city notify everyone directly and post notices around town?" Enclosed please find copies of a few newspaper articles on this issue regarding a recent boil water order, issued due to turbidity in exceedence of 5 NTU. Also enclosed is a copy of *Missouri Resources* with an article on boil orders on pages 2-5.

At community systems, DNR anticipates electronic media notification will still be routinely done, but distribution directly to customers will be the most effective effort. The importance of putting written instructions in peoples hands cannot be overstated. As most community systems under boil water orders serve a small population, DNR has developed a door hanger format using a standard 8.5 x 11 inch sheet of paper. Systems can add needed information and make copies. Next the paper is folded in half so a 5.5 x 8.5 inch door hanger results. A hole is punched in the top of each door hanger and a rubber band is looped through the hole. The door hanger can then be attached to most door knobs and uses readily available office supplies. We approximate that no one in Missouri is more than an hour's drive from a copier they can use for a reasonable cost. Of course some people routinely enter their homes through the back door or garage, so no method is foolproof. When this method is used, however, we may get complaints about the boil order itself, but almost no reports of people not knowing about the boil order in a timely manner. This method is feasible for systems of up to about 500 connections relatively close together and assumes clerical or other staff would assist in distribution. . . .

Use of a minimum of only 1 of be 3 forms of delivery listed is inadequate in most instances. Community systems need to be required to perform at least 2 of the 3 forms given. In certain circumstances a noncommunity system may be allowed to only post the notice, as at a highway rest stop where it's unpredictable who would stop and it's not practical to have personnel handing out notices to everyone who uses the restrooms.

Response: EPA agrees that the focus of delivery should not be primarily electronic media; the *Public Notification Handbook* includes recommendations for other types of delivery, including creating door hangers. EPA realizes that most community systems will need to use more than one method of delivery. This is why EPA prefaced the required methods with a statement that notice must be provided in a form and manner reasonably calculated to reach all persons served. It may be necessary for systems to use other methods in addition to the chosen primary method. This performance standard should prevent systems serving

50,000 people from using posting as a primary method of notification. The consultation required under 141.202(b) is intended to be a backup. If consultation occurs before the notice is provided, the primacy agency might specify a combination of methods to be used for delivery. If it occurs after notification is complete, the primacy agency may require an additional notice.

City of Phoenix, Water Services Department (1.18): [T]he phrase, "reasonably calculated to reach all persons," ignores the fact that most persons traveling through the system at the time of the violation never will be known to the water system. For example, anyone who stopped at a restaurant and drank tap water, then continued his/her trip cannot be identified. Similarly, any person who stayed at a hotel, motel or other lodging and left before the 24-hour period within which notice must be issued, may be impossible to reach, even though the notice includes the required language encouraging those regularly served by the system to notify such transient individuals not normally reached by the notice. Consequently, we recommend that the wording of this section should be: "Public water systems must provide notice within 24 hours in a form and manner reasonably calculated to reach all **customers, including language requesting their help by informing persons who were in the area at the time of the violation, but who have left the area. . . .**

We believe it is essential that the rule note that the notice must be **transmitted** to the "appropriate broadcast media" so as not to imply that it definitely must be broadcast. . . .

We believe the rule should contain language at part of 141.202 that states: "The notice sent to broadcast (radio and television) stations, must contain all required information see 141.205 (a). This information should be arranged in order of importance, including a phone number to call for more information. However, the water system cannot be held accountable if all of the information is not broadcast.

Response: EPA wishes to clarify that systems have a regulatory obligation to do whatever is needed to reach all persons served, not merely the minimum necessary to distribute a notice. Regarding broadcast messages, EPA recognizes that providing a message to electronic media does not guarantee that it will be aired. If the system does not believe the notice will be aired, it is the system's responsibility to take other steps to be sure that the message gets to consumers. It is important that systems cultivate a relationship with the local media in advance so that they can be assured that, in the event of a PN situation, notices are given appropriate attention. In the PN rule, EPA intends to give primacy agencies discretion to address the specifics of each case in determining what actions are appropriate.

Oregon Health Division (1.20): [T]he revised requirements are good, particularly the **and/or hand delivery** in lieu of broadcast media. For example, a mobile home park would be much better served by a hand delivered notice than a radio or television broadcast. Such flexibility is beneficial in providing adequate notice.

Response: EPA agrees and has retained this approach in the final rule.

Natural Resources Defense Council (1.24): The delivery of a Tier One notice as proposed “requires water systems to use, as a minimum, appropriate broadcast media, posting of the notice in conspicuous locations and/or hand delivery to residences or businesses served by the system.” We disagree with the Agency’s proposal that notice be given through either electronic media, posting or hand-delivery. The SDWA requires that notice be provided to the appropriate broadcast media and be prominently posted in a newspaper or be provided by posting or door-to-door notification; this requirement is a floor not a ceiling. SDWA §1414(c)(2)(C)(iv). Due to the urgency of Tier One notices and the severity of the potential health effects, we urge the EPA to adopt a rule that will clearly require that notice be provided through more than one channel at a minimum (i.e.: television or radio and hand-delivery or posting or newspapers). The Act’s mandate in section 1441(c)(1) that all consumers must be notified suggests that mere reliance on a single type of notice that is unlikely to reach all consumers of the water will simply not fulfill the statutory goal. EPA has the authority under this provision of the Act and under section 1450(a) of the Act to require multiple methods of notice. For example, the issuance of a newspaper notice will not reach that majority of the public that does not use newspapers as their primary source of news (including those who cannot read due to their educational status or handicap). Thus, multiple means of notice are critical, particularly for Tier One violations. Certainly Congress could not have intended that the Tier One notices be distributed in a manner less comprehensive and less likely to reach all consumers than PN for Tier Two or Tier Three violations. That, unfortunately, would be the result of EPA’s proposal.

Response: EPA disagrees that more than one method of delivery would be required in all cases. EPA realizes that most community systems will need to use more than one method of delivery. However, many non-community systems and even very small community systems will only need to use one method. This is why EPA prefaced the required methods with a statement that notice must be provided in a form and manner reasonably calculated to reach all persons served. It may be necessary for systems to use other methods in addition to the chosen primary method. This performance standard should prevent situations such as systems serving 50,000 people using posting as a primary method of notification. The consultation required under 141.202(b) is intended to be a backup. If consultation occurs before the notice is provided, the primacy agency might specify a combination of methods to be used for delivery. If it occurs after notification is complete, the primacy agency may require an additional notice. EPA also allows use of another delivery method approved in writing for use in advance or on a case-by-case basis by the primacy agency.

Finally, EPA does not agree that SDWA Section 1414(c)(2)(C)(iv) establishes a “floor” for the 24 hour notice required under 1414(c)(2)(C)(i). Rather, EPA believes that paragraph (iv) applies only to any additional or follow up notices required by the primacy agency after the consultation prescribed in paragraph (iii). These methods of notification do not apply to the immediate 24 hour public notice prescribed in paragraph (i).

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania recommends that EPA maintain mail or direct delivery of PN as a baseline against which other options can be compared for effectiveness. This will allow for the development of innovative methods for delivery of PN while assuring that the targeted customers will receive the same or greater level of coverage. Several methods have been proposed in Pennsylvania as alternatives to direct delivery with varying results. For example, one supplier proposed to use an automated telephone dialer with a pre-recorded message to call every bill-paying customer. The machine would redial until someone or an answering machine took the call. While this seems like a good idea and the system would have a record of the calls, the length of the message that can be delivered and who answers the telephone limits its applicability. As a result, the message could be cut off by the telephone answering machine or missed entirely if a two-year old answers the call. Another option to use email to customers who voluntarily provide an email address or to fax customers who provide a fax telephone number would be more in keeping with traditional mail delivery. The customer in either case would receive the entire text of the PN and would have the same choice of reading or not reading the information as they currently have with mail or hand delivery.

Response: EPA disagrees that mail should be the baseline method of delivery for Tier 1 notices. The rule allows systems to use any one of three methods of delivery. EPA also allows the use of another delivery method approved in writing for use in advance or on a case-by-case basis by the primacy agency. Mail is impractical for Tier 1 notices and hand delivery is not possible for large systems. EPA encourages the use of alternative methods as secondary methods if they would help in reaching all persons served. EPA agrees that methods such as phone dialers and email or faxes may have limited applicability. Therefore, EPA has decided to limit the use of alternative methods as a primary means of notification unless the primacy agency approves the method ahead of time or during consultation.

Metro Water District (Tucson, AZ) (1.26): Regarding form and manner of Tier One Notice Delivery, several methods are mentioned, for example "appropriate broadcast media, posting of notices in conspicuous locations, and /or hand delivery to residences or businesses served by the system". Is this a step-by-step approach and all inclusive, or would one or more of these notification mechanisms meet the Notice Delivery requirement?

Response: One of the three methods must be used. The method chosen should be appropriate for the system type and size. For example, posting would be inappropriate as a primary method in any city. In addition, because the notice must be provided in a form and manner reasonably calculated to reach all persons served, a second or more methods may need to be used. These additional methods do not have to be the other methods listed in the rule, although they can be. The combination of methods must meet the "reasonably calculated" standard. EPA also allows the use of another delivery method approved in writing for use in advance or on a case-by-case basis by the primacy agency.

Iowa Department of Natural Resources (1.30): The sole use of posting the notice of an acute MCL violation should be restricted to non-community systems, and should be required to be noticeably posted (such as at every drinking fountain, entry ways to the business, break rooms, etc.) for as long as the unsafe water condition exists. It is also recommended to renumber the second and third items to list them in a most stringent order: (1) broadcast media; (2) hand delivery; (3) posting.

For an acute MCL violation, an additional mail delivery or newspaper posting requirement within a short time period should be added for community water systems, if notice hasn't already been conducted by hand delivery. Otherwise, in municipalities where the notice would most likely have only been conducted by broadcast media, the consumer has to have heard it on the radio or TV, and usually within 24 hours of the notice, in order to be notified of the problem. There is no guarantee that the news media will continue to inform the consumers that the water is unsafe if the situation exists for an extended period of time. Many areas of the nation do not have "local" radio and TV stations readily available. In addition, the radio and TV stations are under no obligation to run the announcement, although it's difficult to imagine them ignoring the serious situation in their local or nearby community. A possible solution would be to add mail delivery and newspaper posting as additional options using the language from the Tier 2 section, and requiring broadcast media plus one other option for community systems. The IDNR recommends this last solution in order to better inform consumers of this serious situation.

For an acute MCL violation in Iowa, the IDNR, as the SDWA primacy agency, immediately notifies the state department of health of the violation. The local department/board of health and medical community in the affected area are then notified via the department of health's notification mechanism. We would anticipate no change from this practice. However, should it also be a responsibility of the public water supply system (PWS) to notify the medical community in their area, particularly in situations of community and non-transient non-community system acute MCL violations? Such a notification is mandated under the lead public education requirements, and may be appropriate in acute MCL situations.

Response: EPA agrees that posting is inappropriate as a primary method of delivery in almost all community systems, except perhaps at systems such as washeterias in Alaska Native communities. However, EPA believes that the performance standard that requires notification "in a form and manner reasonably calculated to reach all persons served" within 24 hours will prevent the sole use of posting in community systems. EPA also allows the use of another delivery method approved by the primacy agency in writing in advance or during consultation.

EPA has chosen not to require additional follow up methods for notification. However, the rule gives primacy agencies authority to require additional notices. EPA believes that primacy agencies are the best qualified to determine what additional measures are needed, based on the availability of different media or methods of delivery at a specific system.

EPA has decided not to require specific notification of the medical community. EPA believes that the requirement to use methods reasonably calculated to reach all persons served should be sufficient to notify the medical community. EPA also believes that water systems may not have the information needed to contact all members of the medical community. However, EPA feels that primacy agencies have the authority during consultation to require such notification, and EPA will discuss this issue in the *Public Notification Handbook* and primacy guidance.

Utah DEQ, Division of Drinking Water (1.31): Utah also supports the elimination of the redundant follow up methods of public notification for the same violation.

Response: EPA agrees and has retained this approach in the final rule.

Association of Metropolitan Water Agencies (1.35): While AMWA believes that the broadcast media will respond to Tier 1 notifications and broadcast information to the public, it is unlikely that all elements required in a notice will be picked up in all news or special broadcasts. Water systems can control what is given the media, but not what the media does with it.

Along these lines, as long as Tier 1 is limited to violations with significant potential to have serious adverse effects on human health, the broadcast media will be more likely to broadcast the notices.

Response: EPA recognizes that systems may have difficulty preparing notices. For these reasons, EPA has developed a handbook for water systems that includes templates for violations in Tier 1, as well as advice on working with the media. EPA agrees that violations placed in Tier 1 should be those with significant potential to cause health affects and that this can help reduce the likelihood that the media and public will ignore the notice.

Lehigh County (PA) Authority (1.38): Tier 1 violations, requiring notice within 24 hours, must be distributed via radio, television, posting or hand delivery. While other distribution methods may be used in addition to these methods, the Proposed Rule does not allow a water utility to use a more effective method specific to the system, such as auto-dialing customers, in the place of these mandatory methods.

Response: EPA has modified the rule to allow systems to use other methods in place of the required methods if the primacy agency preapproves them or approves them during consultation.

City of Chandler (AZ), Office of the City Attorney (1.41): Is the delivery of notice to broadcast media sufficient to comply with Section 141.202(c)? Unless the water supplier buys air time, it cannot guarantee how, when and in what form the media will actually broadcast notice of a

violation. Posting or hand delivery of a notice is often not a practicable, alternative for large systems even under the old 72-hour time frame.

Response: EPA wishes to clarify that systems have a regulatory obligation to take steps reasonably calculated to reach all persons served, not merely the minimum necessary to distribute a notice. In the PN rule, EPA intends to give primacy agencies discretion to address the specifics of each case in determining what actions are appropriate. Regarding broadcast messages, EPA recognizes that providing a message to electronic media does not guarantee that it will be aired. If the system does not believe the notice will be aired, it is the system's responsibility to take other steps to be sure that the message gets to consumers. It is important that systems cultivate a relationship with the local media in advance so that they can be assured that, in the event of a PN situation, notices are given appropriate attention.

American Water Works Service Co., Inc. (1.46): There are now automatic telephone dialing systems which can call customers and deliver a pre-recorded message. This should be specifically allowed as an alternate to electronic media.

Response: EPA has modified the rule to allow systems to use other methods in place of the required methods if the primacy agency preapproves them or approves them during consultation.

United States Postal Service (2.6): [Add to Tier 1 methods of delivery] *First-Class Mail* or hand delivery of the notice to persons served by the water systems.

The Postal Service has very high standards for overnight delivery of First-Class Mail within specific overnight service delivery areas. Over 95% of first class mail within an overnight delivery service area is delivered the next day. Due to the close proximity of the public water systems to their respective customers, virtually all Tier 1 notices will be mailed within an overnight delivery service area. Mail is a cost effective manner of providing public notification. Postage rates for postcards currently range from \$0.141 - \$0.200 per postcard, depending on the number of pieces mailed and the level of mail preparation and sortation. Another benefit of mailing Tier 1 notices is that mailing avoids the safety factor for the public water system employees/contractors involved with hand delivery of the notice. Postal employees deal with dogs and other local threats every day and have been trained in the precautions to take to ensure their safety while delivering mail.

Response: Although overnight delivery may be possible, it is highly unlikely that a large system could develop a notice, have it printed and folded or stuffed into envelopes, and bring it to the post office in time to still have it delivered to consumers within 24 hours. Therefore, EPA has decided not to specifically allow it as a primary method for Tier 1. However, EPA has decided to allow systems to

use other methods in place of the required methods if the primacy agency preapproves them or approves them during consultation.

Adrianna Quintero, NRDC (at DC meeting) (E.2): Mail is often the only practical way to reach everybody served; not everybody is connected to the Internet or watches TV.

Response: Although overnight mail delivery may be possible, it is highly unlikely that a large system could develop a notice, have it printed and folded or stuffed into envelopes, and bring it to the post office in time to still have it delivered to consumers within 24 hours. Therefore, EPA has decided not to specifically allow it as a primary method for Tier 1. However, EPA has decided to allow systems to use other methods in place of the required methods if the primacy agency preapproves them or approves them during consultation.

Diana Neidle, Consumer Federation of America (at DC meeting) (E.2): There should not be just one method of delivery for Tier 1. Shouldn't there be a combination of methods, or maybe even all three should be required?

Response: EPA disagrees that more than one method of delivery would be required in all cases. EPA realizes that most community systems will need to use more than one method of delivery. However, many non-community systems and even very small community systems will only need to use one method. This is why EPA prefaced the required methods with a statement that notice must be provided in a form and manner reasonably calculated to reach all persons served. It may be necessary for systems to use other methods in addition to the chosen primary method. This performance standard should prevent situations such as systems serving 50,000 people using posting as a primary method of notification. The consultation required under 141.202(b) is intended to be a backup. If consultation occurs before the notice is provided, the primacy agency might specify a combination of methods to be used for delivery. If it occurs after notification is complete, the primacy agency may require an additional notice. EPA also allows use of another delivery method approved by the primacy agency in writing for advance or during consultation.

Bruce Carl, PA DEP (at Allentown meeting) (E.3): More alternatives for distributing Tier 1 notices, such as phone dialers, are needed. The rule should also be clearer about how long posted notices should remain in place.

Response: EPA has modified the rule to allow systems to use other methods in place of the required methods if the primacy agency preapproves them or approves them during consultation.

Monique Coady, U.S. Postal Service (at Phoenix meeting) (E.4): EPA should recommend mailing as the primary method of delivery for Tier 1 notices. Via first class mail, the Postal

Service can deliver notices to each person within 24 hours, if the post office receives them by 5 p.m. The Postal Service can also provide EPA with guidance for formatting mass-mailing post cards that cost \$0.18 per piece to mail.

Response: Although overnight mail delivery may be possible, it is highly unlikely that a large system could develop a notice, have it printed and folded or stuffed into envelopes, and bring it to the post office in time to still have it delivered to consumers within 24 hours. Therefore, EPA has decided not to specifically allow it as a primary method for Tier 1. However, EPA has decided to allow systems to use other methods in place of the required methods if the primacy agency preapproves them or approves them during consultation.

Topic 8: 141.203 (a) Which violations or situations require a Tier 2 public notice?

EPA is requesting comment on the Tier 2 public notification requirements, in particular the list of violations included under Tier 2, the 30-day time period for the initial notice, the requirement for a repeat notice of ongoing violations every three months, the discretions given to the primacy agency 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), and the revised requirements for the method of delivery of the Tier 2 public notice. (64 FR 25976)

Comments:

Note: many commenters proposed including nitrate violations in Tier 2. These comments are included under section 141.202 (a) above.

American Water Works Association (1.14): AWWA generally supports the Tier 2 requirements. AWWA agrees with the listing of Tier 2 violations, the discretion given to the primacy agency to extend the time intervals, and the revised delivery requirements.

Response: EPA has retained these requirements in the final rule.

Oregon Health Division (1.20): [T]he proposed list of violations is appropriate.

Response: EPA has retained this list in the final rule.

Carroll County (MD) Health Department Bureau of Environmental Health (1.27): The proposal states that treatment technique violations are grounds for a tier 3 [*sic*, Tier 2] notification. Will this be required for facilities having maintenance problems with their treatment systems?

Response: Treatment technique violations will be Tier 2. Maintenance problems that result in treatment technique violations require public notice. The PWS may explain the circumstances that led to the violation in their notice.

Virginia Department of Health (1.29): In the absence of EPA allowing the State any discretion to downgrade any violation, we support the option to move some of the MCL and TT violations into Tier 3. We do not believe the rule would be any more complicated by a having a longer list of specific violations in any of the tiers.

Response: EPA has decided not to move any MCL or treatment technique violations to Tier 3. All MCL and TT violations have the potential to cause serious adverse health effects, whether directly or indirectly and, as a result, EPA believes that prompt public notification is necessary.

Maryland Department of the Environment (1.34): Tier 2 notice should be required for all maximum contaminant level (MCL), maximum residual disinfectant level (MRDL), and TT violations; monitoring and reporting (M/R) violations; and variances/exemptions (V/Es). Maryland prefers the first option which moves M/R violations to Tier 3, and the Lead and Copper Rule (LCR) treatment technique violation would also be classified as Tier 3.

Response: EPA has decided to leave the rule as proposed. For public health and right-to-know reasons, EPA does believe 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 in drinking water; this is a significant public health issue for a large segment of the population, and, for this reason, EPA believes that Tier 3 notice is not appropriate.

Akron (OH) Public Utilities Bureau (2.4): APUB agrees with the rule as proposed including . . . the list of violations included under Tier 2

Response: EPA has retained this list in the final rule.

Paul Zielinski, Pennsylvania American Water Company (at Allentown meeting) (E.3): EPA should define the requirements for elevating violations to higher tiers to give systems advance warning that they may have less time to create notices.

Response: EPA plans to make recommendations for elevating violations to higher tiers in its guidance to primacy agencies on implementing the PN rule. EPA agrees that these changes should be made in advance so that all systems have notice of the appropriate PN requirements for each violation.

Topic 9: 141.203 (b) When is the Tier 2 public notice to be provided?

EPA is requesting comment on the Tier 2 public notification requirements, in particular the list of violations included under Tier 2, the 30-day time period for the initial notice, the requirement for a repeat notice of ongoing violations every three months, the discretions given to the primacy agency 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), and the revised requirements for the method of delivery of the Tier 2 public notice. (64 FR 25976) An alternative option to the approach proposed in today's rule would be to require a three month deadline (rather than 30 days) for delivery of the initial Tier 2 notice, and/or a one-year frequency for repeat notices rather than three months. Under this alternative, the primacy agency would retain the discretion to require the notice sooner on a case-by-case basis or across the board for all Tier 2 violations. (64 FR 25976)

Comments:

Massachusetts DEP (1.08): The extension of posting a Tier 2 violation from 14 days to 30 days doesn't provide consumers information of a violation on a timely basis. The proposed rule notes that this extension (with allowance of a primacy agency to extend notice requirements to 3 months) is to help consumers recognize the difference between Tier 1 and Tier 2 violations. With the language requirements of the Tier 1 notice, it should be obvious to the consumer that Tier 2 violations don't pose as significant a health risk as Tier 1 violations. In addition, allowing the possibility of a primacy agency to extend the notice requirements to 3 months from when the violation occurred defeats the purpose of the notice. If the violation is for a contaminant the water system is monitoring at a frequency less than quarterly, the notice will not be masked by recent monitoring results that are in compliance. Such a late notice reporting violations that have since been remedied will be of little relevance or interest to a consumer. The Consumer Confidence Reports (CCR) will provide consumers with past violation information for that reporting year. Tier 2 notices should provide more recent information and allowing a primacy agency to extend the reporting timeframe to 3 months would defeat the purpose.

Response: EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes that the need to know of Tier 2 violations is not immediate. Further, the 30-day time frame distinguishes Tier 2 notification from the more immediate notice required for Tier 1-type violations or situations. Violations in Tier 2 are not likely to pose a serious health risk from short term exposure; thus, immediate notification is not needed. EPA also clarifies that the rule requires notice *as soon as practical*, but in no case longer than 30 days after the system learns of the violation, and that primacy agencies may elevate any Tier 2 violation to Tier 1 if appropriate.

The final rule gives primacy agencies discretion to extend the Tier 2 deadline to up to three months where appropriate. The final rule provides for extensions because EPA recognizes that Tier 2 encompasses a wide range of violations, and that one size does not

fit all. The Agency believes that there are specific situations where extension of the 30-day time frame is appropriate. For example, an extension may be appropriate for violations that were quickly resolved, allowing the water system to include the notice in the same mailing as a quarterly bill. EPA will allow no “across-the-board” extensions and no extensions will be allowed for unresolved violations of any kind.

Coalition for Health, Environment and Economic Rights, et al. (1.09): Achieving the compliance/pollution prevention benefits of the RTK would be substantially aided by eliminating the option of the enforcement agency to extend from 30 to 90 days the deadline to notify a consumer of Tier 2 violations. Treatment violations can be very dangerous; as can be DBP exposure (and OW is far behind the curve in regulating DBPs). As to MCLs, the backbone of the SDWA, although the RfD methodology that sets chronic MCL's is conservative and represents chronic, lifetime exposure risks, it does not account for cumulative exposures, including to unregulated contaminants, nor is every health effect of a contaminant always accounted for by the RfD method. More critically, with the decrease in the required frequency of monitoring in recent years for many PWS, it is possible that large numbers of consumers are already being exposed to contaminants above the MCL for long periods. A further 60 day delay in informed consent is ill-advised.

Response: The final rule gives primacy agencies discretion to extend the Tier 2 deadline to up to three months where appropriate. The final rule provides for extensions because EPA recognizes that Tier 2 encompasses a wide range of violations, and that one size does not fit all. The Agency believes that there are specific situations where extension of the 30-day time frame is appropriate. For example, an extension may be appropriate for violations that were quickly resolved, allowing the water system to include the notice in the same mailing as a quarterly bill. EPA will allow no “across-the-board” extensions and no extensions will be allowed for unresolved violations of any kind.

Consumer Federation of America (1.11): Under current regulations, Tier 2 notifications must occur within 14 days. Under the proposed rule, systems would be given 30 days to notify the public of Tier 2 violations, and the primacy agency would be free to grant an additional 60-day extension. By definition, Tier 2 violations have "the potential for serious adverse effect on human health." Health risk information is useless to the consumer if not delivered in a timely manner. Although some Tier 2 violations may only pose health risks after chronic exposure, others pose a serious threat after short term exposure, especially to infants, children or persons in poor health. We urge, therefore, that the proposed rule at least be amended to require Tier 2 notification within 14 days. We strongly oppose the alternative suggested for comment, that the public notice deadline for Tier 2 violations be a flat 90 days.

Response: EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes that the need to know of Tier 2 violations is not immediate. Further, the 30-day time frame distinguishes Tier 2 notification from the more immediate notice required for Tier 1-type violations or situations. Violations in

Tier 2 are not likely to pose a serious health risk from short term exposure; thus, immediate notification is not needed. EPA also clarifies that the rule requires notice *as soon as practical*, but in no case longer than 30 days after the system learns of the violation, and that primacy agencies may elevate any Tier 2 violation to Tier 1 if appropriate.

Missouri Department of Natural Resources (1.13): Extensions from 30 days to 3 months for some Tier 2 violations may be appropriate. Quarterly billing is a legitimate reason. It can be anticipated, however, a significant portion of the public will consider this excessively lenient. Currently when a total coliform MCL violation tracks to June and the notice is distributed and published in July, many of the public feel they should have been notified when that first total coliform positive sample result was obtained. . . .

For on-going violations of community systems, customers should be directly supplied with the notice. Chancing they might see it on a bulletin board is not adequate.

Response: EPA agrees and has decided to keep the Tier 2 deadline as proposed. EPA has defined in the final rule those circumstances where extensions of the deadline should not be allowed. For initial notices, EPA will allow no “across-the-board” extensions; no extensions will be allowed for unresolved violations of any kind. EPA agrees with the commenter that posting is not an appropriate public notification method at community water systems. The final rule requires that at CWSs, Tier 2 notice be by mail or other direct delivery.

American Water Works Association (1.14): AWWA recommends that the default notification period for Tier 2 violations be set at 120 days to allow utilities that use quarterly billing to include the notice with the regular bill. AWWA also supports the flexibility for the primacy agency to move Tier 2 violations to Tier 1 if necessary to protect public health. Maintaining this flexibility is critical, rather than mandating 24-hour public notification for such violations as turbidity as previously discussed.

Response: EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes there are situations where it is appropriate to extend the timeframe for notification of these violations to up to 90 days. However, EPA will not allow extensions for unresolved violations of any kind, nor are “across-the-board” extensions allowed. EPA believes that extending the time frame to up to 90 days is appropriate, if the violation is resolved, to allow a water system to include the initial notice in the same mailing as a quarterly bill, with no loss in effectiveness.

Chemical Manufacturers Association (1.17): EPA should clarify that subsequent Tier-2 notices are not required after a violation has been corrected.

Response: EPA agrees. The final rule requires a single notice only where the violation or situation has been resolved; repeat notices are only required in the case of on-going violations.

Oregon Health Division (1.20): The 30-day time period for initial Tier 2 notices is reasonable. An extension to 3 months for an initial notice does not seem appropriate because such a delay would likely confuse the public. The initial notice in a timely manner is important even for chronic risks or resolved problems. . . . Repeat notices would be adequate if done annually in conjunction with the CCR. A greater frequency would tend to confuse the public. The State would retain the discretion to require the notice sooner. . . It is appropriate for the States to have flexibility, and discretion to extend the initial notice up to 3-months would allow case-by-case determinations.

Response: EPA appreciates the commenter’s support of the 30-day timeframe for Tier 2 notices. The final rule provides for extensions because EPA recognizes that Tier 2 encompasses a wide range of violations, and that one size does not fit all. The Agency believes that there are specific situations where extension of the 30-day time frame is appropriate. For example, an extension may be appropriate for violations that were quickly resolved, allowing the water system to include the notice in the same mailing as a quarterly bill. EPA will allow no “across-the-board” extensions and no extensions will be allowed for unresolved violations of any kind.

Regarding annual notification for repeat notices, the final rule gives the primacy agency discretion to allow less frequent repeat notice than every three months (but no less than once per year) for unresolved violations. It also specifically disallows primacy agencies from approving less frequent repeat notices for ongoing TCR, SWTR, and IESWTR TT violations.

Association of State Drinking Water Administrators (1.23): ASDWA also supports the appropriateness of a 30 day reporting deadline for Tier 2 violations. ASDWA concurs that this approach is warranted for those violations that pose no acute threat to public health. ASDWA reiterates the request for specific reference to the flexibility for states to determine when a more stringent reporting time frame is necessary in general as well as on a case-by-case basis.

Response: EPA clarifies that the rule requires notice *as soon as practical*, but in no case longer than 30 days after the system learns of the violation, and that primacy agencies may elevate any Tier 2 violation to Tier 1 if appropriate. EPA will reiterate this point in the preamble to the final rule.

Natural Resources Defense Council (1.24): We strongly oppose permitting extensions of the notification period. We are especially concerned with allowing extensions up to 90 days. Permitting these extensions defeats the purpose of the Public Notification Rule altogether by failing to provide the public notice while there is still opportunity to prevent potentially serious

adverse health effects. For certain violations, such as trihalomethane and arsenic, a twelve-month period of detection is required before a violation can be determined. Adding a three-month extension to that year-long period is simply unacceptable.

While we are adamantly opposed to extensions, we are particularly surprised that the EPA has not even specified what *specific circumstances* would qualify as grounds for an extension, leaving this instead to the state primacy agency's discretion. This could ultimately result in states granting blanket 90-day extensions to one or more systems for virtually any reason. Although some Tier Two violations may only pose health risks from chronic exposure, some can be dangerous after exposure of several days or months, especially to infants, children, or persons in vulnerable health. These extensions substitute the public's interest for the interest of the water system. The purpose of the PN rule is notifying the public NOT providing the water system with sufficient time to remedy the situation prior to notification or allowing systems to include the public notice with the consumer's quarterly water bill. We firmly oppose the alternative suggesting a flat 90-days as well as any extensions beyond 30-days.

Response: The final rule gives primacy agencies discretion to extend the Tier 2 deadline to up to three months where appropriate. The final rule provides for extensions because EPA recognizes that Tier 2 encompasses a wide range of violations, and that one size does not fit all. The Agency believes that there are specific situations where extension of the 30-day time frame is appropriate. For example, an extension may be appropriate for violations that were quickly resolved, allowing the water system to include the notice in the same mailing as a quarterly bill. EPA will allow no "across-the-board" extensions and no extensions will be allowed for unresolved violations of any kind.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania recommends that Tier 2 PN be routinely issued within 30 days after the violation with the option for a state to extend that to 3 months on a case-by-case basis, rather than the option to automatically give 3 months. Even though the Tier 2 MCL violations are related to contaminants with chronic rather than acute health risks, there is always the risk that a sub-population exists who are more susceptible to harm than the general population. Those individuals should have the benefit of being notified sooner than 3 months, so they can take the necessary precautions to protect their health.

Pennsylvania recommends that CWSs repeat notice for on-going Tier 2 violations every 3 months. This serves as an incentive for the CWS to return the violation to compliance. The alternatives presented in Section VI (B) should not present a problem if monitoring violations are elevated to Tier 2. Currently, return to compliance for monitoring violations usually involves the supplier taking the next round of samples as soon as possible to verify that no MCL or treatment technique violation exists and the issuance of PN. In those instances, repeat PN would not be an issue.

Response: In the final rule, EPA defines circumstances where extensions of the deadline should not be allowed. For initial notices, EPA will allow no “across-the-board” extensions; no extensions will be allowed for unresolved violations of any kind. EPA has clarified in the final rule that the PWS must repeat the notice every three months as long as the violation or situation exists, unless the primacy agency determines, in writing, that appropriate circumstances warrant a different repeat notice frequency. Decreases in repeat notice frequency will not be permitted for violations of the Total Coliform Rule, Surface Water Treatment Rule, and Interim Enhanced Surface Water Treatment Rule.

Utah Department of Environmental Quality, Division of Drinking Water (1.31): Utah supports the longer time frame for public notice for violations public health effects with long term exposure. Utah also supports the elimination of the redundant follow up methods of public notification for the same violation.

Response: EPA agrees with the comment and has decided to keep the Tier 2 deadlines as proposed.

Maryland Department of the Environment (1.34): The proposed rule requires a Tier 2 public notice to persons as soon as possible, but no later than 30 days after the violation with quarterly repeats. Maryland supports the three month deadline rather than 30 days for all Tier 2 violations except total coliform and nitrate violations which should remain at 30 days. Quarterly updates are also preferred because it encourages the system to take immediate actions to take corrective actions after the initial notice.

Response: EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes there are situations where it is appropriate to extend the timeframe for notification of these violations to up to 90 days. However, the Agency does not believe this applies to all Tier 2 violations and has set the default time frame for Tier 2 notice at 30 days. For example, EPA will not allow extensions for unresolved violations of any kind, nor are “across-the-board” extensions allowed. EPA believes that extending the time frame to up to 90 days is appropriate, if the violation is resolved, to allow a water system to include the initial notice in the same mailing as a quarterly bill.

Association of Metropolitan Water Agencies (1.35): AMWA believes that the default period for reporting Tier 2 violations should be 120 days to allow the many water systems using quarterly billing to include the notice with bills. This period could be reduced by the State when appropriate.

Response: EPA has decided to retain the 30 day timeframe for Tier 2 notification. EPA believes there are situations where it is appropriate to extend the timeframe for notification of these violations to up to 90 days. However, the Agency does not believe this applies to all Tier 2 violations and has set the default time frame

for Tier 2 notice at 30 days. For example, EPA will not allow extensions for unresolved violations of any kind, nor are “across-the-board” extensions allowed. EPA believes that extending the time frame to up to 90 days is appropriate, if the violation has been resolved, to allow a water system to include the initial notice in the same mailing as a quarterly bill.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): If EPA does elect to proceed with a three-tiered approach, then a three-month deadline for delivery of Tier 2 notices would be appropriate. Many water systems bill customers quarterly, or on a three-month cycle. The rule would impose less of a hardship on utilities if the mailing can be included with the bill. If no health danger exists that would require a Tier 1 notice, then a delay of three months would not endanger customers.

Response: EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes there are situations where it is appropriate to extend the timeframe for notification of these violations to up to 90 days. However, the Agency does not believe this applies to all Tier 2 violations and has set the default time frame for Tier 2 notice at 30 days. For example, EPA will not allow extensions for unresolved violations of any kind, nor are “across-the-board” extensions allowed. EPA believes that extending the time frame to up to 90 days is appropriate, if the violation is resolved, to allow a water system to include the initial notice in the same mailing as a quarterly bill, with no loss in effectiveness.

City of Chandler (AZ), Office of the City Attorney (1.41): The 30-day time period for Tier 2 Public notice (see Section 141.203(b)) is not always practicable if such notice is to be included with the monthly bills sent to water customers. Because our bills are typically mailed to 4 or 5 zones within Chandler's service area throughout each month, and billing services require some lead time to prepare space for a notice, we propose a 45-day time limit. A strict 30-day time limit would often preclude the most effective option of providing notice within the billing statement and require a special mass mailing at considerable expense to the water system. As such, the proposed 30-day time limit effectively eliminates some of the flexibility EPA claims the rule was intended to provide.

The repeat notice required at Section 141.203(b) should not be required if the violation is not on-going. All violations for a given year can be summarized in the annual CCR. Providing continuous repeat notices on a quarterly basis of all past violations, when there is no on-going threat to the public relating to those past violations, serves no purpose.

Response: Regarding the commenter’s suggested timeframe of 45 days, EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes there are situations where it is appropriate to extend the timeframe for notification of these violations to up to 90 days. However, the Agency does not believe this applies to all Tier 2 violations and has set the default time frame for Tier 2 notice at 30 days. For example, EPA will not allow extensions for unresolved violations

of any kind, nor are “across-the-board” extensions allowed. EPA believes that extending the time frame to up to 90 days is appropriate, if the violation has been resolved, to allow a water system to include the initial notice in the same mailing as a quarterly bill, with no loss in effectiveness. EPA recognizes that 30 days and 45 days are fairly similar, but in a national rule, the Agency had to choose a cutoff point. Regarding repeat notices for resolved violations, the final rule requires repeat notices only in the case of on-going violations.

Akron (OH) Public Utilities Bureau (2.4): APUB agrees with the rule as proposed including . . . the 30 day time period for the initial Tier 2 notice, with discretion given to the primacy agency to extend the initial notice to three months. . . the requirement for a repeat Tier 2 notice of ongoing violations every three months, with discretion given to the primacy agency to extend the repeat notice frequency to one year.

Response: EPA agrees and has retained this approach in the final rule.

Diana Neidle, Consumer Federation of America (at DC meeting) (E.2): If there are already problems notifying the public of Tier 2 violations in 14 days, as required currently, EPA should not be relaxing this deadline further. If systems do not comply with the new 30-day deadline or get an extension of up to 90 days, most notices will not make the 30-day deadline.

Response: EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes that the need to know of Tier 2 violations is not immediate. Further, the 30-day time frame distinguishes Tier 2 notification from the more immediate notice required for Tier 1-type violations or situations. Violations in Tier 2 are not likely to pose a serious health risk from short term exposure; thus, immediate notification is not needed. EPA also clarifies that the rule requires notice *as soon as practical*, but in no case longer than 30 days after the system learns of the violation, and that primacy agencies may elevate any Tier 2 violation to Tier 1 if appropriate.

Adrianna Quintero, NRDC (at DC meeting) (E.2): Extending the deadline for Tier 2 notification to 90 days poses too great a health risk.

Response: In the final rule, EPA defines circumstances where extensions of the deadline should not be allowed. For initial notices, EPA will allow no “across-the-board” extensions; no extensions will be allowed for unresolved violations of any kind.

Frederick Loomis, Clean Water Action (at Allentown meeting) (E.3): The deadline for Tier 2 notification is too long.

Response: EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes that the need to know of Tier 2 violations is not immediate.

Further, the 30-day time frame distinguishes Tier 2 notification from the more immediate notice required for Tier 1-type violations or situations. Violations in Tier 2 are not likely to pose a serious health risk from short term exposure; thus, immediate notification is not needed. EPA also clarifies that the rule requires notice *as soon as practical*, but in no case longer than 30 days after the system learns of the violation, and that primacy agencies may elevate any Tier 2 violation to Tier 1 if appropriate.

Phyllis Rowe, Arizona Consumers Council (at Phoenix meeting) (E.4): For Tier 2 violations, the 30-day deadline is too late for a violation with “serious adverse health effects;” a seven day deadline is recommended.

Response: EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes that the need to know of Tier 2 violations is not immediate. Further, the 30-day time frame distinguishes Tier 2 notification from the more immediate notice required for Tier 1-type violations or situations. Violations in Tier 2 are not likely to pose a serious health risk from short term exposure; thus, immediate notification is not needed. EPA also clarifies that the rule requires notice *as soon as practical*, but in no case longer than 30 days after the system learns of the violation, and that primacy agencies may elevate any Tier 2 violation to Tier 1 if appropriate.

Bing Brown, City of Phoenix Water Services (at Phoenix meeting) (E.4): Mail or hand delivery of a Tier 2 notice within 30 days is difficult for large systems. Bill inserts are typically prepared one month ahead of mailing, and a Tier 2 notice would not be complete by the deadline. In some systems, the billing cycle is continuous; bills are sent out as meter results come in. Suggested alternatives include a preliminary notice in the newspaper or on the radio within 30 days, followed up by a more complete notice after the 30-day deadline.

Response: EPA has decided to retain the 30-day timeframe for Tier 2 notification. EPA believes there are situations where it is appropriate to extend the timeframe for notification of these violations to up to 90 days. EPA recognizes that an extension beyond 30 days may be especially appropriate for contaminants posing a chronic rather than acute health risk. However, the Agency does not believe this applies to all Tier 2 violations and has set the default time frame for Tier 2 notice at 30 days. For example, EPA will not allow extensions for unresolved violations of any kind, nor are “across-the-board” extensions allowed. EPA believes that extending the time frame to up to 90 days is appropriate, if the violation has been resolved, to allow a water system to include the initial notice in the same mailing as a quarterly bill. Regarding the use of newspapers for Tier 2, newspaper notices are typically placed in the legal notices section of the newspaper where they are not likely to be read. For this reason, they are not permitted as a primary method of notification for Tier 2. However, primacy agencies may approve newspaper or other methods as alternatives to mail or hand delivery.

Topic 10: 141.203 (c) What is the form and manner of the Tier 2 public notice?

EPA is requesting comment on the Tier 2 public notification requirements, in particular the list of violations included under Tier 2, the 30-day time period for the initial notice, the requirement for a repeat notice of ongoing violations every three months, the discretions given to the primacy agency 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), and the revised requirements for the method of delivery of the Tier 2 public notice. (64 FR 25976)

Comments:

City of Anaheim, Public Utilities Department (1.05): The Department supports the EPA's proposal to set minimum required procedures for water systems to follow and the requirement that water systems consult the primacy agency to ensure that appropriate measures are taken. [*Comment also relates to Tier 1 and Tier 3 delivery.*]

Response: EPA has retained the consultation requirement for Tier 1. For Tiers 2 and 3, EPA decided not to have a mandatory consultation requirement because such violations would not necessarily require consultation and because tracking compliance with such a requirement would be a burden, especially for Tier 2 violations which require more frequent notice than Tier 3 violations. However, EPA has decided to require 24-hour consultation for single turbidity exceedances, even though the violations will still be in Tier 2. This will enable states to decide whether to elevate turbidity exceedances to Tier 1. In any case, EPA anticipates that consultations between systems and primacy agencies will happen, whether the rule requires them or not. Systems must report violations to the state within 48 hours (or less for some violations). In addition, in many states, it is the primacy agency that informs systems of violations. In addition, systems may consult the primacy agency to make sure they are doing their notice correctly.

Des Moines Water Works (1.07): DMWW supports allowing a public water system to choose their public notice distribution methodology. This will encourage compliance and the development of creative solutions that will assist both the system and the public. Generally, the proposed rules encourage compliance with EPA regulation by allowing a system to determine practical distribution methods based on its customer base and will make compliance more feasible for the system. We would also offer that this proposed rule could be more effective if primacy agency would review the delivery methods proposed by systems prior to implementation of any notice.

Creative solutions will be developed if each system is allowed to develop their own notification method. Each system will develop methods tailored to their own individual needs. Thus, several different options will be created for fulfillment of the requirement. EPA's analysis of the various

notice distribution methods used by systems will result in EPA's better understanding of options that work for systems of different sizes. EPA will be then be able to make more informed recommendations for delivery requirements in the future.

DMWW suggests that a system be required to consult with the primacy agency prior to using a specific notice distribution methodology. The primacy agency's review of the delivery method will ensure that a system is adequately developing methods to inform the community they serve while meeting EPA regulations. [*Comment also relates to Tier 3 delivery.*]

Response: EPA agrees with the commenter on the importance of flexibility in the public notification process. However, EPA feels that the rule must specify basic requirements in order to allow the rule to be self-implementing and enforceable. Therefore, while the rule provides flexibility it also limits methods of notification and requires that the chosen methods may need to be supplemented if the minimum method is not likely to reach all persons served. Systems have significant flexibility in determining what supplemental methods should be used. In addition, primacy agencies may allow other methods in place of the required methods. EPA considered requiring consultation with the primacy agency for Tier 2 and Tier 3 violations (to discuss methods of delivery, among other things) but decided it against it because tracking compliance with such a requirement would be a burden, especially for Tier 2 violations which require more frequent notice than Tier 3 violations. In practice, consultation may already be occurring, since systems must report all violations to the state within 48 hours and since many states inform systems that they are in violation. In addition, requiring consultation would place an additional tracking burden on primacy agencies.

Coalition for Health, Environment and Economic Rights, et al. (1.09): It appears OW's proposed performance based standard governing who and how many consumers are reached by Tier 2 notices of violations is illegal. The Act requires that public notice be provided "to the persons served by the system" [SDWA 1414(c)(1)]. As you note, a portion of consumers do not receive an invoice from their PWS, eliminating this assured route of delivery of violation notices to countless people (OW should **require** that PWS **request** that landlords, managers, commercial or residential--whoever receives their invoice--send, duplicate or post the enclosed notice. Many, possibly millions more, would thus receive their informed consent). Whereas Tier 1 notices seems to contain at least an attempt to fulfill this hard and fast requirement--by requiring broadcast media, conspicuous location posting, or direct delivery; Tier 2 would only require a delivery method "reasonably calculated to reach other persons regularly served". You must meet the requirement of the law--possibly just substituting Tier 1's requirement would keep you out of trouble. . . .

Flexibility in notice delivery methods. Again, beware of grossly violating the Act's plain english requirement to reach all consumers. We disagree that your floated alternative that PWS take "steps reasonably calculated to reach all persons served" is legal. Rather than not even require a specific notification method (i.e. only have this vague non-requirement), OW must have a hard

and fast requirement that assures strong efforts by PWS's to reach all their consumers. We are shocked to see OW propose to walk around this crucial requirement, which Congress inserted as the heart of their response to decades of complaints that SDWA violation notices were not being read by anyone.

All these recommendations highlight the need to *DELIVER* on the Act's promised RTK provisions, i.e., OW should broadly review for RTK efficacy the proposed requirements as to notice frequency and how many consumers are reached; inter alia[.] For example, aside from the above questions, are there assurances that posted notices will be durable, especially outdoors? Or, is the requirement that the posted location be "conspicuous" specific enough? [*Comment also relates to Tier 3 delivery.*]

Response: The commenter may have misread the proposed rule. EPA did propose a performance standard for Tier 2; however, it also proposed a minimum requirement of mail or hand delivery for community water systems and a minimum of posting, mail, or hand delivery for non-community systems. Systems must then take other steps to make sure the performance standard is met. EPA also requires that notices, where applicable, include language asking landlords, business owners, etc., to provide notices to tenants, customers, and others. EPA has chosen to keep the rule language for Tier 2 delivery as it was in the proposed rule.

EPA believes that the overarching requirement, that the notice be provided in a form and manner reasonably calculated to reach all persons served in the required time period, along with the specific methods identified in the rule, meet the letter and spirit of the public notice provisions in SDWA Section 1414. EPA believes that Congress left decisionmaking on how best to implement the 1414(c) provisions to EPA, in consultation with its State partners, as specified in 1414(c)(2). Recognizing that it is impossible for all systems to reach all persons who might have been or are drinking water from the system during a violation, EPA's objective has been to make sure that the rule is specific enough to give systems firm instruction on how to get the word out to a significant number of easily identifiable users by highly reliable methods. They must then to try to reach everyone else, including those who may be hard, if not impossible, to identify, with any other method reasonably calculated to reach them. EPA believes that the rule thus requires systems to inform as many persons as is reasonably possible and that no more is required under Section 1414(c).

Regarding the display of the notices themselves, EPA feels that the types of systems where notices will be displayed are too varied to set specific requirements for durability and conspicuousness. Any requirements EPA might set would be inappropriate for at least some systems. However the bottom line is that the notice must be in a form and manner reasonably calculated to reach persons served in the required time period. A notice that lacks reasonable durability would not meet this requirement and would thus be a violation of this rule.

Commission of Public Works, City of Spartanburg, SC (1.10): Proposed requirements for Tier 2 Public Notice (141.203) require that notice be made within 30 days after the system learns of a violation, but grants primacy states flexibility to extend this period to three months (141.203 (b)). Tier 2 violations, in general, would not present an acute risk to health. Many violations could potentially be corrected within a three month time period. A three month notification period would thus allow Public Water Systems, which are always conscious of public perception, the opportunity to present a less negative notice for a Tier 2 violation, indicating in many cases that the cause of the violation had been identified and corrected. SWS therefore recommends that the time period to issue a Tier 2 Public Notice be set at three months. . . .

The proposed Public Notification Rule does not clearly address in all cases how often and for how long public notices must be maintained and/or repeated. SWS recommends clarification of language for when public notices of all types may be discontinued or rescinded.

Response: EPA disagrees that the Tier 2 deadline should be three months. EPA has retained the 30 day timeframe for Tier 2 notification. However, the final rule gives primacy agencies discretion to extend the Tier 2 deadline to up to three months where appropriate. For violations that have been resolved, EPA requires that the notice be posted for seven days. EPA believes that seven days is long enough for consumers to see the notice but not long enough for them to become desensitized to it. EPA expects the primacy agencies to make decisions on when a violation or situation has been resolved.

Consumer Federation of America (1.11): The proposed rule sets an excellent performance standard for the delivery of Tier 2 public notification: "that the notice be provided in a form and manner reasonably calculated to reach all persons regularly served by the system." We are concerned, however, that the minimum methods required for the delivery of a Tier 2 notice do not meet this standard. While we support the requirement to mail or otherwise directly deliver the Tier 2 notice to each customer, we believe the final rule should also require the use of broadcast media as the simplest and cheapest way of reaching non-bill-paying consumers. When broadcast media cannot be reasonably expected to reach most of those served, then the system should be directed to select another appropriate method of reaching non-customers.

Response: EPA's intent in setting the minimum method allowable for delivery of Tier 2 notices is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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, such as broadcast media, would serve to enhance this minimum objective.

Missouri Department of Natural Resources (1.13): In the proposed rule, the near elimination of the publication of the public notice is most unfortunate. Publication requirements need to be maintained as in the current rule. Waivers are allowed in the current rule and this should allow appropriate flexibility. Much criticism has been given to printing public notices in the public notice section of newspapers, as it is not widely read. While some of this criticism is justified, newspaper publication provides documentation not generally available through other methods of public notice. When DNR receives an affidavit of publication and a copy of the notice on newsprint, we can feel confident the public notice has indeed been performed and has become a permanent document readily available to most consumers. Documentation of other methods of public notice do not inspire this confidence. This is non-trivial.

A minimum time frame for posting must be specified in addition to "for as long as the violation or situation exists". If a system fails to monitor for 11 months, but submits one sample at the end of the year just before it has to do public notice for that first violation, it could be argued that the violation no longer exists, so the notice doesn't have to be posted at all. This is why if posting is to be the method of public notice, it needs to be done in as timely a manner as possible and to remain posted for a reasonable period of time. For MCL and major monitoring violations, DNR specifies a minimum posting period of 7 days if the violation has been corrected or is corrected during the 7 day posting time. [*Second paragraph of comment also relates to Tier 3 delivery.*]

Response: EPA agrees that it is important for primacy agencies to have documentation that public notice requirements were met. Indeed, systems are required to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice. EPA believes this requirement is sufficient to allow regulators to track compliance and will increase voluntary compliance with the PN requirements.

EPA's intent in setting the minimum method allowable for delivery of Tier 2 notices is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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 notes that newspapers are included in the rule as a possible additional method to ensure that the notice reaches all persons served.

On the commenter's point about the duration of posting, EPA agrees that the regulation could be read as if posting was not required if the violation was resolved. Therefore, it decided to add a minimum posting requirement. All systems posting a notice will have to post for as long as the violation persists, or for at least seven days if they have returned to compliance.

American Water Works Association (1.14): AWWA supports the proposed requirements for mail or direct delivery of the notices. The menu-based approach would only create more questions on compliance, rather than providing answers. [*Comment also relates to Tier 3 delivery.*]

Response: EPA has retained this approach in the final rule. EPA's intent in setting a minimum method allowable for delivery of Tier 2 notices is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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.

Massachusetts Water Resources Authority (1.19): MWRA supports the option which would allow the PWS to choose from a longer list of possible delivery methods, including delivery by mail or by hand. MWRA agrees with EPA that the PWS's obligation to take steps reasonably calculated to reach all persons served can be better accomplished by giving the PWS flexibility to select the delivery method most likely to reach persons served, as circumstances require. [*Comment also relates to Tier 3 delivery.*]

Response: EPA has chosen to keep the Tier 2 delivery requirements the same as in the proposed rule. EPA's intent in setting the minimum method allowable for delivery of Tier 2 notices is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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.

Oregon Health Division (1.20): The proposed requirements seem reasonable, i.e., minimum specific method to deliver notice, with options to reach other persons served. . . . The alternative of allowing water systems to select from a menu of delivery options rather than require that a specific method be used, seems like it would be confusing for the water system and more difficult to monitor by the States.

Response: EPA has retained this approach in the final rule. EPA's intent in setting the minimum method allowable for delivery of Tier 2 notices is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be

provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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.

Midwest Food Processors Association, Inc. (1.21): In order to provide additional flexibility for noncommunity systems to provide notice of tier 2 and 3 violations, delete sections 141.203(c)(2)(ii) and 141.204(c)(2)(ii) because a posting, mailing or direct delivery is reasonably calculated to reach persons served by the system of violations which are not nearly as serious as the tier 1 violations. Requiring additional notification for tier 2 and 3 violations to unknown users of a noncommunity system could be a futile effort. If the unknown users have already left the area, which is relatively common in a seasonal operation, any attempt to contact the unknown users through newspapers, newsletters or copies to central locations would not only be fruitless and untimely, but required under the proposed rule. Alternatively, the EPA could use the word 'or' instead of 'and' at the end of sections 141.203 (c)(2)(i) and 141.204 (c)(2)(i). This would make the notification of those not known to the noncommunity drinking water system another option and it could be still be required by the primacy agency. [*Comment also relates to Tier 3 delivery.*]

Response: EPA disagrees with the proposed change to the rule language. An initial notice may not reach all persons served by the system, and therefore another method of delivering the notice may be needed. Beyond the minimum delivery requirement, 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. Examples when EPA would expect additional notices beyond the minimum include: for community water systems that provide drinking water to persons who do not pay a water bill or otherwise receive their drinking water from the bill paying customers (e.g., students, renters, prisoners) and would not routinely receive a mailed notice. This additional method 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).

San Francisco Public Utilities Commission (1.22): Two issues of interest to the SFPUC that are open to interpretation by the primacy agency are posting requirements and the use of multilingual notices. The Public Notification Handbook presents general recommendations for posting notices, but does not define the type and number of locations. For large regional PWS such as SFPUC, such efforts could be costly and ineffective.

Response: The *Public Notification Handbook* provides guidance to systems on how to comply with PN requirements, including suggestions for posting of Tier 2

notices. The handbook is general in nature because EPA realizes that it can not address every possible situation. The rule sets a performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. EPA believes that individual systems, perhaps in consultation with primacy agencies, are in the best position to determine the specific type and number of locations to post notices. For a large community water system, posting would most likely be used, if at all, as a supplementary method in cases where consumers would not receive a mailed copy. If it is unlikely to be effective as a public notice, then the system should choose a more appropriate method.

Natural Resources Defense Council (1.24): Notices must be reasonably calculated to reach all persons served. To achieve this goal, we urge the Agency adopt a proposal which will require at a minimum that community systems mail or directly deliver notices to all persons served and use at least one other method of communication historically designed to reach large numbers of the population (media, fliers, posting). While section 1414(c)(2)(D)(I) suggests that notice in a bill, a separate report, or by direct delivery is required, nothing in the Act prohibits EPA from going beyond this absolute minimum, and EPA is obliged under the Act to assure that all users of the water will be notified (see section 141(c)(1), [sic] requiring notice to the persons served by the system). Section 1450(a) also provides EPA with additional authority to assure that the statutory goal of full notice is achieved through requiring multiple means of notice. We urge the Agency reject the proposal to allow the primacy agency to adopt methods as it deems appropriate because we fear this could result in a lack of true notice to consumers. This would result in a situation similar to past problems identified by GAO in its report several years ago. The GAO report gave impetus to Congress to amend this provision of the Act to improve public notice. EPA should recognize Congress intent and adopt a proposal which assures true notice reaches all persons served.

The law allows systems to include the public notice with the consumers quarterly water bill. This method of delivery alone, however, could defeat the purpose behind the PN provision of providing timely notice to all persons affected in a timely, clear and simple fashion. Allowing utilities to include the notice of violations as a bill stuffer alone will not draw adequate attention to this very important document and will fail to reach all persons served. This document must be a separate and discrete notice designed to catch the reader's attention.

Response: EPA has chosen to adopt the rule language as proposed. For community water systems, the proposed rule *does* require mail or hand delivery and the use of additional methods to reach those who would not be reached by mail or hand delivery, as the commenter requested. In some community systems, additional methods may *not* be necessary, because all consumers may be reached by mail or hand delivery. For non-community water systems, mail or hand delivery are not always practical, so posting is also allowed as a minimum. Non-community systems will still have to use another method if the minimum is not likely to reach anyone who would not normally be reached by one of these

methods. Such persons may include persons not expected to see a posted notice because the notice is not in a location they routinely pass. The 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).

Regarding the commenter's concern that bill stuffers would not draw adequate attention, EPA notes that section 141.205(c)(2)(iii) requires that notices not be formatted in a way that defeats the purpose of the notice. In addition, not all notices will be included in quarterly bills. Notice is required for Tier 2 violations within 30 days, unless primacy agencies grant an extension of *up to* 90 days.

Metro Water District (Tucson, AZ) (1.26): Of the two alternatives described, alternative two appears less financially imposing to public water supplies, but not as pro-public information oriented. Perhaps combining more of the pro-public information in alternative two would suffice.

Response: EPA's intent in setting a minimum method allowable for delivery of Tier 2 notices is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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.

New Hampshire Department of Environmental Services (1.28): In regards to the method of delivery for public notice, our systems have not had any difficulty in fulfilling requirements under the current system, therefore we do not have a need for additional methods. We are not in favor of leaving the delivery methods open ended since determining compliance could be more difficult and require additional staff review time.

Response: EPA's intent in setting a minimum method allowable for delivery of Tier 2 notices is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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.

Virginia Department of Health (1.29): The proposed rule does not contain any language about how long to repeat a Tier 2 notice. It just says to repeat the notice every 3 months and in no case

less frequent than yearly. The Tier 3 requirements address the length of time the notice must be repeated, i.e. for as long as the violation exists. The proposed 30-day initial notice and 3-month repeat notice requirements, along with state discretion to lengthen those times, are not unreasonable.

The proposed language, consisting of a minimum prescribed method plus other options to reach persons served, is acceptable in that it also allows the state to direct some changes even to the prescribed delivery method. [*Comment also relates to Tier 3 delivery.*]

Response: EPA has retained its approach to Tier 2 and 3 delivery in the final rule. EPA's intent in setting a minimum method allowable for delivery of Tier 2 notices is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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.

Regarding the commenter's request for clarification on repeating Tier 2 notice, the PN rule requires notices of unresolved violations to be repeated every three months for as long as the violations persist.

Iowa Department of Natural Resources (1.30): The form and manner of the Tier 2 public notice is well-written, understandable, and protective of public health.

Response: EPA has retained this approach to Tier 2 notification in the final rule.

Maryland Department of the Environment (1.34): The regulation states that a system should maintain the posting until the violation is resolved. For most total coliform violations, the system corrects the problem within one to two weeks of the occurrence. This wording in the regulation makes it difficult to require notices after the violation has been corrected.

OPTION SECTION VI(B): EPA requested alternative language. The wording should say or, not and. This allows more flexibility for meeting the needs of the community and directing information to the correct population. It is also important to recognize that violations will also be reported through the Consumer Confidence Report for all community water systems.

Response: EPA disagrees with the commenter's suggested alternative language. EPA believes that both a minimum delivery method *plus* an additional method necessary to reach persons served are necessary. EPA's intent in setting a minimum is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance

standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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 agrees that the regulation could be read as if posting was not required if the violation was resolved. Therefore, it decided to add a minimum posting requirement. All systems posting a notice will have to post for as long as the violation persists, or for at least seven days if they have returned to compliance.

New York Department of Health (1.36): In Section 141.203, we believe the method of delivery for a tier 2 repeat notice should be a newspaper notice, with discretion given to the primacy agency to require mail or other form of direct delivery to each customer. This will reduce a tremendous burden on large public water systems operating under an established compliance schedule.

Response: EPA has chosen to keep the requirements the same as in the proposed rule. EPA believes that the method of delivery requirements for Tier 2 notices will ensure that notices announcing violation of drinking water requirements are communicated earlier and more effectively than under the current rule to a wider range of the people served by the water system.

EPA's intent in setting a minimum method allowable for delivery of Tier 2 notices is to get public notices into people's hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. EPA does not believe that newspaper notices meet this objective. Newspaper notices are typically placed in the legal notices section of the newspaper where they are not likely to be read. 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 additional methods used, including newspapers, would serve to enhance this minimum objective.

United States Postal Service (2.6): [Modify rule language to read] Unless directed otherwise by the primacy agency, community water systems must provide notice by: . . . Mail or other direct delivery to each customer receiving a bill **or to each address within the impacted area** or other service connections . . . The Postal Service often delivers bulk mailings to each postal customer within a zip code or area specified by the mailer. A bulk mailing would reach more persons than those limited to receiving a bill from the public water system, including all residents within an apartment complex or mobile home park that have an individual address but do not receive an individual monthly water bill. The local Postmaster is available to assist the public water system

owner operator by providing the correct number of postal service addresses within a specified geographical area. [*This comment also relates to Tier 3 delivery.*]

Response: EPA agrees that delivering notices to billing customers only would not be sufficient. EPA is changing the rule language at 141.202(c)(1)(i) to read “mail or other direct delivery to each customer receiving a bill and to other service connections.” EPA believes this clarifies the rule. In some cases, mail to postal patrons may be appropriate; however this approach may not work for every system that must do public notification. Where mail to postal patrons is the most efficient way to reach all service connections, EPA agrees that it should be used. EPA also would appreciate any input the commenter can provide for the discussions of Tier 2 and Tier 3 delivery in the *Public Notification Handbook*.

Adrianna Quintero, NRDC (at DC meeting) (E.2): Mail is often the only practical way to reach everybody served; not everybody is connected to the Internet or watches TV.

Response: EPA believes that the method of delivery requirements for Tier 2 notices will ensure that notices announcing violation of drinking water requirements are communicated earlier and more effectively than under the current rule to a wider range of the people served by the water system. At a minimum, those people reached by mail or direct delivery would receive the notice early enough to make informed choices about their drinking water.

Unidentified participant at Allentown meeting (E.3): Mail or direct delivery are rarely done, rather, systems rely on newspaper notices, especially where billing cycles are not conducive to meeting the 30-day deadline for distributing Tier 2 notices.

Response: EPA will not allow newspaper to be used as a minimum method in the final rule, although it may be used as a supplemental method. Newspaper notices are typically placed in the legal notices section of the newspaper where they are not likely to be read. EPA’s intent in setting a minimum method allowable for delivery of Tier 2 notices is to get public notices into people’s hands. EPA believes that the methods identified in the rule will allow systems to meet the performance standard that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. 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, including newspapers, would serve to enhance this minimum objective.

Topic 11: 141.204 (a) Which violations or situations require a Tier 3 public notice?

EPA is requesting comment on the proposed Tier 3 public notice requirements, in particular on the option to allow public water systems to provide an annual report of violations in lieu of individual notices twelve months after each violation. (64 FR 25977)

Comments:

Dave Van Fleet (1.03): I agree that these types of violations should be in tier 3.

Response: EPA has retained these violations in the Tier 3 list in the final rule.

City of Anaheim, Public Utilities Department (1.05): The Department supports EPA's proposal to place "monitoring and testing procedure violations" in the Tier 3 category due to the fact that a majority of monitoring violations are unlikely to result in imminent health threats. In addition, EPA should provide primacy agencies the flexibility to place "monitoring and testing violations" in the Tier 1 or Tier 2 on a case-by case basis depending on the specific incident. Placing "monitoring and testing procedure violations" in the Tier 2 category may only reduce the effectiveness of the public notification process in the long run.

Response: EPA agrees and has retained this approach in the final rule.

Des Moines Water Works (1.07): DMWW agrees with the EPA proposal to classify monitoring and testing procedure violations as a Tier 3 violations. A Tier 3 violation classification is appropriate for these types of violations because they are unlikely to produce immediate adverse health effects. Under this proposed rule, EPA authorizes the primacy agency to evaluate the violation to determine whether it should be re-classified as a Tier 2 violation. Giving the primacy agency this discretion offers more flexibility for the public water system to negotiate with the agency as well, it provides a system of checks and balances, ensuring that monitoring and testing violations with immediate adverse health effects result in a Tier 2 violation.

Response: EPA agrees and has retained this approach in the final rule.

Coalition for Health, Environment and Economic Rights, et al. (1.09): OW is aware of the irretractability of massive numbers of monitoring violations. This represent a large and serious risk (failure to detect acute or chronic contaminants), which justifies moving the notification of these violations into Tier 2 from Tier 3 (annual reporting); but allowing PWS's to petition and show that their monitoring record is now adequate enough to report monitoring violations annually.

Response: EPA has decided to keep all monitoring and testing procedure violations in Tier 3, except for those already in Tier 1, unless the primacy agency

decides to elevate them. 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 meets the public's right to know about these violations. While some monitoring and testing procedure violations may have the potential for serious adverse health effects, many others may not. EPA believes that the appropriate tiering for monitoring and testing procedure violations must be done on a case-by-case basis and that it would be impossible to identify all instances where Tier 2 notice would be more appropriate in the rule. 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.

Consumer Federation of America (1.11): Major Monitoring Violations Should Be Subject to Tier 2 Notifications. Chronic, repeated failure to test or to take samples at the scheduled times and locations for microbial indicators or some 80 regulated contaminants exposes the public to unknown adverse health effects potentially significant enough to merit Tier 1 or 2 classification. Nonetheless, the proposed rule classifies any and all monitoring violations as so unimportant that they need only be grouped together and reported to the public in one annual notice. The proposed rule leaves it to the discretion of the primacy agency to upgrade a serious monitoring violation to Tier 1 or 2. However, we believe that some monitoring violations are too serious to be left to primacy agency discretion. We urge that a Tier 2 public notice be required for all serious monitoring violations as currently defined and classified by EPA as "Major Monitoring Violations."

Response: EPA has decided to keep all monitoring and testing procedure violations in Tier 3, except for those already in Tier 1, unless the primacy agency decides to elevate them. 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 meets the public's right to know about these violations. While some monitoring and testing procedure violations may have the potential for serious adverse health effects, many others may not. EPA believes that the appropriate tiering for monitoring and testing procedure violations must be done on a case-by-case basis and that it would be impossible to identify all instances where Tier 2 notice would be more appropriate in the rule. 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 that the rule should distinguish major monitoring and testing procedure violations from other monitoring and testing procedure violations – this would make the PN rule overly 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.

Missouri Department of Natural Resources (1.13): The almost cavalier approach taken to monitoring violations in this document is troublesome, While some monitoring violations are the onetime violations soon rectified, referred to by the author, as a group monitoring violations do

pose a direct threat to the public health and need to be treated as such. Since 1994, Missouri DNR has systematically listed PWSs with chronic major monitoring violations of the total coliform rule on statewide news releases (most recent enclosed). This takes a major commitment of time and resources, involves sending out letters by certified mail warning PWSs with 3 major monitoring violations they will be so listed if they do not begin and continue to monitor faithfully, and requires additional violation tracking for the timeliness necessary in issuing a news release. The effort is worth it, as the systems listed on these news releases have a rate of acute violations for fecal coliform/E. coli 2.5 times higher than that of all public water systems in the state. That rate would be even higher, of course, if samples had been submitted as required.

EPA seems oblivious of the correlation between monitoring violations and systems with major bacteriological problems. A system that conscientiously submits samples and occasionally ends up with an MCL violation does not usually pose near the public health problem of a system that chronically fails to monitor. Indeed an MCL violation can be the first step in correcting a problem: that of identifying it. With chronic monitoring failure, bacteriological problems remain unidentified, therefore more of a threat to the public health. A well run system may end up with an MCL violation when a pump is struck by lightning or other situations truly out of the operator's control. In one instance a total coliform MCL violation resulted from a drunk driver hitting a well house. The important thing is to do the necessary monitoring to identify and correct the problem. Chronic monitoring violations, however, are entirely within the control of the water system and are contemptuous of both public health and drinking water regulations. A few systems apparently refuse to monitor *because* they have major bacteriological problems.

The proposed public notice rule caters to these negligent systems, allowing them up to a year to account for their neglect, and can give them an alarmingly unfair advantage over systems that conscientiously comply with all monitoring requirements. While allowing the primacy agency discretion to make chronic violators perform public notice in a more timely manner, this is another time-consuming step in the process. It would be preferable to leave the federal regulations for monitoring violations at "as soon as possible, but in no case later than 3 months after the violation-"

Consider the possible effect of this rule change in a hypothetical situation of two competing resorts across the road from each other, each with their own well and therefore TWSs. One system has a perfect record of no monitoring or MCL violations until they replace the pump; they immediately shock chlorinate and flush the system, but since this was the first time it was necessary, they didn't do a perfect job of it and end up with an MCL for total coliform. They dutifully post the public notice until they've shocked and flushed the system again and subsequently received total coliform absent results from the lab. The owner of the resort across the road, however, decides monitoring the drinking water is too much of a pain because 3 of the samples he mailed in last season arrived too late at the lab to be tested. He doesn't want to pay the extra dollar each month to send 114 samples priority mail and it's DNR's fault the samples got there late anyway. He also thought it was too much trouble to seal the wellhead properly as instructed by DNR staff just before closing for the season last year. Over the winter a family of mice nested on the wellhead and their droppings went straight into the well. The month after he

opened this year, he got a monitoring violation notice from DNR. It just made him laugh because the only consequence of this violation is that he has to post a notice within a year and heck, he'll have the place sold by then!

Now imagine that you're an 80 year-old retiree recovering from the last round chemotherapy that hopefully you'll need to beat cancer. Your white cell counts are back up and your doctor gives you the go-ahead to leave on a brief getaway, but she reminds you to take it easy and watch what you eat and drink. You've always been thrifty so you decide to price resorts before checking into one. Those two across the road from each other look promising, so you inquire about prices at the first one, but see the public notice for the total coliform MCL violation and are concerned. The resort across the road costs the exact same amount and since there's no notice posted, the water here must be fine. The next day you and your spouse are so stricken with diarrhea, neither of you can leave the resort. You call your daughter to please come get both of you. She takes you immediately to the hospital where you stay for a month. In the meantime, your spouse calls the state primacy agency and requests the drinking water results for the resort you stayed at, but there are no results on file for the system this year, only monitoring violations. Being thorough, your spouse finds out that this unscrupulous resort owner failed to monitor, but had up to a year to notify the public, while the resort across the road had a much less severe bacteriological problem, but a much more strict time-frame on performing public notice. This make no logical sense to your spouse who wonders how the regulations got that crazy.

For public notice for monitoring violations to have any meaning at a TWS, these systems must be instructed in their first violation notice to post the notice immediately and keep the notice posted until they have received good sample results from the lab. The "stick" of negative publicity of the public notice and "carrot" of getting to take the notice down when good sample results have been received, are necessary enforcement tools for dealing with these systems. It is also not reasonable for the primacy agency to have to wait over a year before being able to cite a system for failure to perform public notice. . . .

For monitoring violations, the requirements of Tier 2 would be better than those currently listed as Tier 3 (annually). However rather than bumping monitoring violations up to Tier 2, it would be much more manageable to allow only 3 months for most Tier 3 violations.

Response: EPA has decided to keep all monitoring and testing procedure violations in Tier 3, except for those already in Tier 1, unless the primacy agency decides to elevate them. 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 meets the public's right to know about these violations. While some monitoring and testing procedure violations may have the potential for serious adverse health effects, many others may not. EPA believes that the appropriate tiering for monitoring and testing procedure violations must be done on a case-by-case basis and that it would be impossible to identify all instances where Tier 2 notice would be more appropriate in the rule. 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 that transient non-community systems should be required to post immediately. The Tier 3 requirements do not parallel the language for other tiers by requiring notice “as soon as possible” so as not to hinder the effectiveness of other more immediate notices.

American Water Works Association (1.14): AWWA supports the flexibility for the primacy agency to move a M/R violation up to a Tier 2, but it should not be a federally mandated requirement.

Response: EPA agrees and has retained this approach in the final rule.

Oregon Health Division (1.20): **It is appropriate that the public notice for all monitoring and testing procedure violations follow the Tier 3 annual notice requirements**, unless the primacy agency determines on a case-by-case basis that the more stringent Tier 2 notice is necessary. This is compatible with the CCR requirements, and will help avoid confusion.

Response: EPA agrees and has retained this approach in the final rule.

Natural Resources Defense Council (1.24): Major Monitoring Violations . . . EPA recognizes that persistent monitoring violations can disguise significant health threats. Chronic, repeated failure to test or to take samples at scheduled times and locations for microbial indicators or regulated contaminants, however, exposes the public to potentially significant adverse health effects. Nevertheless, the agency is proposing these violations generally be categorized and subject only to Tier Three annual notice requirements, while allowing the primacy agency to classify violations as Tier One or Tier Two if they deem it necessary. We feel this runs afoul of the statutory intent to protect public health and provide timely notice to consumers of potentially serious health risks. We urge EPA to recognize the importance of reporting a major monitoring violations to the served population in a timely fashion, and urge that the final rule list specific serious and chronic monitoring violations as major monitoring violations requiring Tier Two notice.

Minor Monitoring and Reporting Violations . . . The proposed rule classifies all remaining violations and situations requiring public notice not included in Tier One and Tier Two: major or minor monitoring violations; failure to comply with an established treatment procedure; operation under a variance or exemption; or other violations as determined by the primacy agency. This classification is essentially a catch-all for all remaining unclassified violation. In accordance with our urging that the agency classify major monitoring violations as Tier Two violations, we urge the agency to classify all minor monitoring violations as Tier Three thereby specifically setting forth all reporting requirements.

Response: EPA has decided to keep all monitoring and testing procedure violations in Tier 3, except for those already in Tier 1, unless the primacy agency decides to elevate them. 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 meets the public's right to know about these violations. While some monitoring and testing procedure violations may have the potential for serious adverse health effects, many others may not. EPA believes that the appropriate tiering for monitoring and testing procedure violations must be done on a case-by-case basis and that it would be impossible to identify all instances where Tier 2 notice would be more appropriate in the rule. 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 that the rule should distinguish major monitoring and testing procedure violations from other monitoring and testing procedure violations – this would make the PN rule overly 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.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): While it is recognized that in most cases a public water system (“PWS”) with a good monitoring history could forget to monitor during one monitoring period and the health risk is minimal. However, PWSs with MCL violations may deliberately choose not to monitor if the punishment for non-monitoring is the annual issuance of public notice. This is definitely a less severe consequence even though the risk to public health is probably known.

Pennsylvania recommends designating all monitoring violations as Tier 2 with the state option to by rule or on a case-by-case basis to reduce some or all to Tier 3 as it would be easier for states that cannot be more stringent than EPA to implement that type of option. In addition, it would allow a state to require faster notice than annually at a transient noncommunity water system (TNCWSs) that missed monitoring for total coliform or nitrate/nitrite. Different types of PWSs may need to be separated out since a single missed quarterly sample for total coliforms at a TNCWS may have more significance than a single sample for the same contaminant at a CWS or NTNCWS. This could be done with the case-by-case model.

Pennsylvania recommends that EPA classify monitoring and testing procedure violations as Tier 2 with the option to designate by state rule making, which may allow a case-by-case option, those that can be considered Tier 3. This would allow Pennsylvania the option to require TNCWSs to post PN more quickly than 12 months after the fact. The possibility of a case-by-case determination to move from Tier 2 to Tier 3 may be useful where a PWS makes a compelling case to the state for such a change.

Response: EPA has decided to keep all monitoring and testing procedure violations in Tier 3, except for those already in Tier 1, unless the primacy agency decides to elevate them. 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 meets the public's right to know about these violations. While some monitoring and testing procedure violations may have the potential

for serious adverse health effects, many others may not. EPA believes that the appropriate tiering for monitoring and testing procedure violations must be done on a case-by-case basis and that it would be impossible to identify all instances where Tier 2 notice would be more appropriate in the rule. 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.

Iowa Department of Natural Resources (1.30): In the preamble to this proposed rule, it seemed as though monitoring violations were considered to be less serious in consequence than other violations (MCL, TT, variance and exemption). If a system does not conduct the required monitoring, the system will never violate the MCL or TT standards. Just because the monitoring is not conducted does not mean the water meets the MCL or TT standards. For contaminants which can cause acute health effects (bacteria, nitrate, nitrite, chlorine dioxide, and SWTR parameters), failure to monitor should be a Tier 2 violation, with the 30-day notice period. This would especially apply to bacteria repeat sampling requirements. For those contaminants with chronic health effects (inorganics, organics, disinfection byproducts other than chlorine dioxide, and radionuclides), the 365-day notice of the Tier 3 violation is more acceptable, although also seems excessively lengthy (see next comment). The IDNR supports the change of violations for failure to monitor for contaminants that cause an acute health effect from Tier 3 to Tier 2 violations. . . .

Annual repeat notice should only be available for as long as a variance, exemption or other situation exists - and not for a monitoring violation. The system should have collected the sample within the year time-period, since the clock starts running when the PWS learns of the violation and not when they actually missed the sample. If they failed to collect the sample, further administrative action (such as a court order) should be in progress, and any additional public notice requirement could fall in the "other situation" category. The IDNR recommends the removal of repeat monitoring violations from this section. . . .

Microbiological contaminants: All violations of these contaminants. . . should be increased to Tier 1 MCL/MRDL/TT violations, and Tier 2 monitoring violations. The IDNR strongly urges such a change in violation classification.

Response: EPA has decided to keep all monitoring and testing procedure violations in Tier 3, except for those already in Tier 1, unless the primacy agency decides to elevate them. 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 meets the public's right to know about these violations. While some monitoring and testing procedure violations may have the potential for serious adverse health effects, many others may not. The PN rule elevates certain monitoring and testing procedure violations to Tier 1, including failure to check for fecal or *E. coli* when repeat samples for coliform are positive, failure to take repeat samples in the distribution system for chlorine dioxide, and failure to take a confirmation sample for nitrate. EPA believes that the appropriate tiering

for monitoring and testing procedure violations must be done on a case-by-case basis and that 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. Regarding the commenter's argument about serious monitoring and testing procedure violations, all enforcement actions have a public participation component. If a primacy agency finds that a monitoring violation is serious enough to warrant formal enforcement action, it is likely that the violation would be elevated to Tier 2.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): CWD believes that nearly all monitoring and testing procedure violations do not risk the health of customers and it is therefore appropriate that these violations default to Tier 3 public notice. However, if the primacy agency does decide that a particular violation results in a danger to customers, then Tier 2 notice can be required on a case-by-case basis.

Response: EPA agrees and has retained this approach in the final rule.

American Water Works Service Co., Inc. (1.46): A monitoring violation for nitrate is proposed as Tier 3, however due to the acute health effects, we believe this should be Tier 2.

Response: In the final rule, EPA has added situations 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 to the list of situations requiring Tier 1 notice. Where a system has persistent monitoring and testing procedure violations or where such violations pose a health risk, primacy agencies may elevate any monitoring violation to Tier 2.

Akron (OH) Public Utilities Bureau (2.4): APUB agrees with the rule as proposed including . . . to make Tier 3 the default public notice tier for monitoring and testing procedure violations. The vast majority of the monitoring and testing procedure violations would appropriately follow Tier 3 public notification. The preamble allows the primacy agency to assign Tier 2 in the rare cases where appropriate.

Response: EPA agrees and has retained this approach in the final rule.

Adrianna Quintero, Natural Resources Defense Council (at DC meeting) (E.2): The rule should make major monitoring violations Tier 2 if that is how some states will be implementing it anyway. Then states will not have to worry about deadlines and will be able to focus on the important violations.

Response: EPA has decided to keep all monitoring and testing procedure violations in Tier 3, except for those already in Tier 1, unless the primacy agency decides to elevate them. 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 meets the public's right to know about these violations. While some monitoring and testing procedure violations may have the potential for serious adverse health effects, many others may not. EPA believes that the appropriate tiering for monitoring and testing procedure violations must be done on a case-by-case basis and that it would be impossible to identify all instances where Tier 2 notice would be more appropriate in the rule. 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. Finally, EPA does not agree that the rule should distinguish major monitoring and testing procedure violations from other monitoring and testing procedure violations – this would make the PN rule overly 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.

Unidentified participant at DC meeting (E.2): It makes sense to combine reporting of monitoring violations rather than sending out one notice at a time for minor violations. However, if tests are not done, consumers do not know whether they were at greater risk. Does the proposal allow for elevating those violations?

Response: The proposed rule allows primacy agencies to elevate monitoring and testing procedure violations to Tier 2 based on potential health impacts and persistence of the violations. It also allows them to elevate to Tier 1 any other violations or situations with significant potential to cause serious health effects as a result of short term exposure.

Topic 12: 141.204 (b) When is the Tier 3 public notice to be provided?

EPA is requesting comment on the proposed Tier 3 public notice requirements, in particular on the option to allow public water systems to provide an annual report of violations in lieu of individual notices twelve months after each violation. (64 FR 25977)

Comments:

Mike Mecke (1.01): Minor violations (definition?) may be grouped into quarterly reports delivered in similar manner as above. With an Executive Summary. [sic]

Annual Report made available easily to all customers, local libraries, environmental and water-related organizations and universities within their service areas. With and [sic] Executive Summary outlining fully the significant violations. [sic]

Response: EPA is not specifically recommending quarterly reporting of Tier 3 notices. The PN rule specifies a minimum timeframe for Tier 3 notice that EPA feels is necessary; systems are free to prepare more frequent notices if they prefer to do so.

Consumer Federation of America (1.11): We agree that it is acceptable for the public to be notified of Tier 3 violations once a year in one annual mailing as long as the Major Monitoring Violations are defined as requiring a Tier 2 public notification. . . . the annual Tier 3 Public Notice to all customers should be made in a separate document either in its own mailing or as an enclosure in the mailing of the Consumer Confidence Report.

Response: EPA will allow the use of an annual report or the CCR for all monitoring and testing procedure violations not elevated to Tier 2 or not automatically placed in Tier 1. EPA encourages systems to make use of the CCR or an annual report to distribute Tier 3 notices. PNs and CCRs provide similar information, although their messages are different. Combining the two documents can be more efficient for the water system without reducing the effectiveness of either. If the PN is included in the CCR, EPA will allow the system to decide how the information can best be presented. PNs may be included in the CCR provided the PN content and delivery requirements are met. EPA disagrees that the rule should distinguish major monitoring and testing procedure violations from other monitoring and testing procedure violations – this would make the PN rule overly 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.

Missouri Department of Natural Resources (1.13): "New customers" are not the same at community and noncommunity systems. Particularly at TWSs, an annual notice of violation is particularly inadequate.

The proposed public notice rule caters to these negligent systems, allowing them up to a year to account for their neglect, and can give them an alarmingly unfair advantage over systems that conscientiously comply with all monitoring requirements. While allowing the primacy agency discretion to make chronic violators perform public notice in a more timely manner, this is another time-consuming step in the process. It would be preferable to leave the federal regulations for monitoring violations at "as soon as possible, but in no case later than 3 months after the violation." . . .

For violations that fall into the third tier, public notice should be required to be performed as soon as possible, but in no case later than 3 months after the violation. Since an entire compliance period passes before a monitoring violation occurs, some time lag for public notice is unavoidable and acceptable. . .

Annual notice is appropriate only for a small number of violations. For example, if an otherwise well run system has a major monitoring violation the same month the operator dies of a heart attack, the city clerk has gall bladder surgery, and the mayor resigns, some latitude may be appropriate. A system could have no more than two major monitoring violations of the Total Coliform Rule and still be worthy of this flexibility. This would be a logical candidate for performing the public notice in the CCR. At noncommunity systems, however, allowing up to a year to perform public notice, means public notice will not be done. DNR provides all systems with the appropriate public notice forms when violation notices are issued. All a TWS has to do would be to provide a pencil and a thumb tack. . .

DNR takes exception to the sentence: "EPA strongly recommends that public water systems make use of the annual notice option." Rather, why would not EPA strongly recommend that systems perform public notice as soon as possible? . . . EPA seems oblivious that requiring a system to post a public notice for as long as the monitoring violation exists may actually motivate a system to collect samples in a timely manner, so they can take down the notice. Rewarding monitoring violators with lax public notice requirements sets an extremely bad precedent. Meanwhile, for those systems that conscientiously meet all monitoring requirements, but get a Tier I violation, EPA cut the time allowed by 67%.

As long as Tier 3 defaults to annual public notice, it is unacceptable.

Response: EPA disagrees with the proposal to require Tier 3 notice "as soon as possible but. . ." EPA believes that requiring notice as soon as possible is appropriate for the more serious violations in Tiers 1 and 2. The Tier 3 requirements do not parallel the language for other tiers requiring notice "as soon as possible" so as not to hinder the effectiveness of other more immediate notices. EPA also disagrees that annual notice is appropriate for a small number of violations. The 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 there are more compelling reasons to retain annual notice. EPA notes that promoting compliance with monitoring requirements should be part of

the primacy agency's overall compliance strategy – certainly PN could be used to further this purpose.

The violations and situations in Tier 3 are non-serious violations. EPA believes that 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.

Natural Resources Defense Council (1.24): We agree with the agency's proposal that Tier Three violations be reported once a year in an annual mailing so long as major monitoring violations are defined as Tier Two violations. We nevertheless urge the agency to require that notices for Tier Three violations be provided to customers and distributed to all others served as soon as possible.

Response: EPA will allow the use of an annual report or the CCR for all monitoring and testing procedure violations not elevated to Tier 2 or not automatically placed in Tier 1. EPA encourages systems to make use of the CCR or an annual report to distribute Tier 3 notices. PNs and CCRs provide similar information, although their messages are different. Combining the two documents can be more efficient for the water system without reducing the effectiveness of either. If the PN is included in the CCR, EPA will allow the system to decide how the information can best be presented. PNs may be included in the CCR provided the PN content and delivery requirements are met. EPA disagrees that the rule should distinguish major monitoring and testing procedure violations from other monitoring and testing procedure violations – this would make the PN rule overly 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.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania objects to the language in Sections 141.202(b), 141.203(b), and 141.204(b) that deals with issuing a Tier 1, 2, or 3 PN, respectively, “after the system learns of the violation.” The proposed language in each case is imprecise and subject to various interpretations as to when a system constructively “learned” of a violation. . .[A] year later it may be very difficult to track down when the system was notified to ensure that PN was issued within the prescribed time limit. Pennsylvania recommends, for consistency, changing the wording in all three sections to “. . . after the system is notified by their analytical laboratory or otherwise learns of the violation.” This allows a state that does not personally collect and analyze a system's samples to more precisely determine when a supplier had constructive knowledge of the violation. For Tier 3, this would help to identify testing procedure violations as well as reporting violations, but would not be of much help for monitoring violations. . . .

Pennsylvania is concerned that NTNCWSs serving schools, which lose students through promotion or graduation every year may not notify those individuals if a once every 12 month report is all that is required. In addition, TNCWSs should report a failure to perform total coliform or nitrate/nitrite monitoring within a short time period after the violation to help customers assess their risk of consuming the systems water. This would be handled easily if all current Tier 3 violations were reclassified as Tier 2 with the state option to change them back to tier 3 by contaminant or by system type.

[M]ore frequent than every 12 month PN is needed where non-monitoring can be shown to be a serious risk to public health based on prior monitoring results at a specific PWS. In such cases, waiting for the system to do the next round of monitoring and receive the results may result in an unnecessary health risk. This is another situation in which site specific knowledge and a requirement for emergency public notice come together.

Response: EPA disagrees with the proposed change to the rule regarding the trigger point for the Tier 3 deadline. 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 would interpret “learns” to include situations where the system refused to “learn” of the violation by ignoring mail or telephone messages.

EPA acknowledges the commenter’s point that at transient NCWS, consumers who leave the area and never return would not be aware of a monitoring violation. However, EPA does not feel that this relatively uncommon situation justifies requiring all Tier 3 notice to be as soon as possible. EPA believes the Tier 3 requirements should not parallel the language for other tiers requiring notice “as soon as possible” so as not to hinder the effectiveness of other more immediate notices. The risk associated with monitoring and testing procedure violations ends when the required monitoring is performed and drinking water is found to meet appropriate standards. If a violation is discovered, Tier 2 or Tier 1 notice would be appropriate. 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, and this should address the commenter’s concern that notice more frequent than 12 months is needed where non-monitoring is a serious public health risk.

New Hampshire Department of Environmental Services (1.28): Although we can see the benefits of a three tier notification process, we do not agree that water systems should be given up to a year to report what is currently defined as tier three violations (such as monitoring and reporting violations (M/Rs)). Our program spends a great deal of time stressing the importance of monitoring on a timely basis and working with systems to avoid M/R violations. We feel that allowing up to a year to report a monitoring error undermines our efforts. Also, by requiring a quick turnaround time for M/R public notice (such as required under Tier 2 notification (30 days)), we believe that it helps us achieve better monitoring compliance. Many systems are motivated to sample on time if they know that public notice will be required promptly if

compliance doesn't occur. We believe that our enforcement tracking abilities will suffer if a year is allowed to elapse between violation and notice. Also we believe that consumers should be notified promptly when an error has occurred so that proper measures can be taken immediately to rectify the situation.

Response: The violations and situations in Tier 3 are non-serious violations. EPA believes that 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. The 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 there are compelling reasons to retain annual notice. EPA notes that promoting compliance with monitoring requirements should be part of the primacy agency's overall compliance strategy – certainly PN could be used to further this purpose.

Virginia Department of Health (1.29): The proposal to allow an annual report of violations makes good sense for all the reasons stated in the rule preamble, page 25977.

Response: EPA agrees and has retained this approach in the final rule.

Iowa Department of Natural Resources (1.30): The 365-day time period for Tier 3 notices seems to be excessively lengthy to notify the public of these violation types. If the purpose of the public notification is to keep the consumers informed of their water system's activities, this year-long period doesn't seem to serve that purpose. . . The IDNR suggests that the period be shortened to a 90-day period, similar to the existing rule, and that no exception be made for solely publishing it in the CCR as a means to notify the public. . .

Response: EPA disagrees that the deadline for Tier 3 notification should be 90 days. The violations and situations in Tier 3 are non-serious violations. EPA believes that 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.

Utah DEQ, Division of Drinking Water (1.31): Utah supports the longer time frame for public notice for monitoring violations.

Response: EPA agrees and has retained the annual reporting requirement in the final rule.

Maryland Department of the Environment (1.34): EPA requested comment on allowing all Tier 3 to be provided in an annual report. This would be appropriate for CWS, and should be allowed. If an annual notice is allowed for NC systems, the systems may elect to delay testing. It would make it simpler to require NC systems to issue notices within three months of the violation. It is unclear if the deadline is the end of the calendar year, or one year after the violation date.

Response: EPA agrees with the commenter that in some cases, annual reports may be appropriate for NCWS as well. To the commenter's point about systems possibly delaying testing to avoid a Tier 2 violation, EPA believes that, in most cases, this would not be the outcome of allowing annual notification. EPA believe that such negligent systems are the exception rather than the rule, and such systems would be targets of greater scrutiny by primacy agencies, who would likely elevate monitoring and testing procedure violations at such systems to a higher tier.

EPA wishes to clarify that the deadline for Tier 3 notification is one year after the system learns of the violation, not at the end of the calendar year. This deadline applies, whether the PN is published in a separate notice, an annual report, or the CCR.

Akron (OH) Public Utilities Bureau (2.4): APUB agrees with the rule as written including the option to allow public water systems to provide an annual report of Tier 3 violations in lieu of individual notices twelve months after each violation. . .

Response: EPA agrees and has retained the annual reporting requirement in the final rule.

Topic 13: 141.204 (c) What is the form and manner of the Tier 3 public notice?

Finally, comments are requested on the revised requirements for the method of delivery of the Tier 3 notices. (64 FR 25977)

Comments:

Note: Several commenters addressed Tier 2 and Tier 3 form, manner, and delivery requirements together in their comments. The text of these comments is provided under Topic 10, and are not repeated here. These commenters include: City of Anaheim, Public Utilities Department; Des Moines Water Works; Coalition for Health, Environment and Economic Rights, et al.; Missouri Department of Natural Resources; American Water Works Association; Massachusetts Water Resources Authority; Midwest Food Processors Association, Inc.; Virginia Department of Health; and United States Postal Service. Comments unique to Tier 3 delivery issues are provided below.

Consumer Federation of America (1.11): . . .In order to reach non-customers who are served by the water utility with the Tier 3 notice the language proposed in the rule for Tier 2 and 3 seems adequate for Tier 3 notices:

Use any other method reasonably calculated to reach other persons regularly served by the system if they would not normally be reached by the mail or direct delivery requirement (e. g., newspaper, posting in public places, delivery to community organizations, etc.)

Response: EPA agrees and has retained this language in the final rule.

Oregon Health Division (1.20): [A] minimum specific method seems reasonable.

Response: EPA agrees and has selected this approach to give systems some flexibility in delivering notices to their consumers but at the same time have an objective and easily enforceable minimum requirement.

Carroll County (MD) Health Department Bureau of Environmental Health (1.27): Another tier 3 condition is a system that operates under a variance or exception. Should all of these be posted, including those with a “Bottled Water System” classification? Current postings do not meet the content requirements of this proposal. Does this type of notice apply in a situation where a tanker for potable water is authorized for temporary periods? Those facilities are probably already posted for some other violation. Would we post 2 notices or just keep up the other notices?

Response: Public notice is required for all variances or exemptions granted under Section 1415 and 1416 of the SDWA. If a system is required by a state or EPA to

provide bottled water under enforcement or other authority, public notice is required under the PN rule for the violation, not separately for the bottled water.

Lehigh County (PA) Authority (1.38): The Proposed Rule does not provide specific guidance to utilities regarding proper public notification procedures for monitoring violations (Tier 3) which involve several contaminants.

For example, if a water utility fails to monitor for volatile organic contaminants (VOCs), for which one sample is normally taken to complete testing for several contaminants, the Proposed Rule does not specify whether the utility must provide: a separate public notice for each contaminant; one general public notice regarding the monitoring violation; or one public notice with each VOC listed therein. The draft handbook, however, suggests that each contaminant must be listed. The Rule should be clarified, and the handbook should reflect the requirement.

Response: A separate notice is not needed for each contaminant. EPA is changing the first of the ten content elements (section 141.205(a)(1)) to read “description of the violation, including the contaminant(s) of concern” to clarify the agency’s intent. This is also explained in the *Public Notification Handbook*. EPA also notes that systems can use annual reports to notify the public of multiple Tier 3 violations; the same formatting requirements would apply.

United States Postal Service (2.6): The Postal Service often delivers bulk mailings to each postal customer within a zip code or area specified by the mailer. A bulk mailing would reach more persons than those limited to receiving a bill from the public water system, including all residents within an apartment complex or mobile home park that have an individual address but do not receive an individual monthly water bill. The local Postmaster is available to assist the public water system owner operator by providing the correct number of postal service addresses within a specified geographical area.

Response: EPA agrees that delivering notices to billing customers only would not be sufficient. EPA is changing the rule language at 141.202(c)(1)(i) to read “mail or other direct delivery to each customer receiving a bill and to other service connections.” EPA believes this clarifies the rule. In some cases, mail to postal patrons may be appropriate; however this approach may not work for every system that must do public notification. Where mail to postal patrons is the most efficient way to reach all service connections, EPA agrees that it should be used.

Adrianna Quintero, NRDC (at DC meeting) (E.2): Mail is often the only practical way to reach everybody served; not everybody is connected to the Internet or watches TV.

Response: EPA believes that the method of delivery requirements for Tier 3 notices will ensure that notices announcing violation of drinking water requirements are communicated earlier and more effectively than under the current rule to a wider range of the people served by the water system. At a

minimum, those people reached by mail or direct delivery would receive the notice early enough to make informed choices about their drinking water.

Topic 14: 141.204 (d) In what situations may the Consumer Confidence Report be used to meet the Tier 3 public notice requirements?

EPA is requesting comment on the proposed Tier 3 public notice requirements, in particular on the option to allow public water systems to provide an annual report of violations in lieu of individual notices twelve months after each violation. Comments are also requested on the use of the Consumer Confidence Report to meet the Tier 3 public notification requirements. Finally, comments are requested on the revised requirements for the method of delivery of the Tier 3 notices. (64 FR 25977)

Comments:

Dave Van Fleet (1.03): I agree that . . . the "Public Notice" could be part of the annual Consumer Confidence Report.

Response: EPA agrees and has continued to provide for this option in the final rule.

Indiana DEM (1.04): We believe that notification of the Tier 3 violations on an annual basis in one notification (or possibly in the Consumer Confidence Report) would be sufficient for most violations that fall in this category. By providing these notices in the Consumer Confidence Report (for community water systems), there is a better chance that they will be seen than if they are published in the Legal Notice section of a newspaper. Since they will have a better chance of being seen, there is also a better chance that they will be read. In addition, since other water quality information will also be available in the same document, the information may mean more to the consumer than if published or distributed as an individual notice.

Response: EPA agrees and has continued to provide for this option in the final rule.

City of Anaheim, Public Utilities Department (1.05): Since the proposed rule requires that public water systems provide the Tier 3 notice to all customers served no later one year after the system learns of the violation, the Department supports the proposal for an annual summary of violations to be included in the Consumer Confidence Report. Using an annual summary report instead of individual notices for each violation could significantly reduce notification cost. In fact, one of the requirements of the Consumer Confidence Report is to report any compliance violation that the water system had in the calendar year.

Response: EPA agrees and has continued to provide for this option in the final rule.

Washington State Department of Health, Division of Drinking Water (1.06): We fully support the use of the Consumer Confidence Report for Tier 3 PN reporting. We are concerned,

however, that a PWS could be confused by the offset of the CCR's calendar-year reporting period versus the PN 12-month reporting period. The two reporting periods do not coincide. We anticipate some PWS will report violations in the CCR that pre-date the 12-month Tier 3 reporting period. It is critical that the PN rule and PN Handbook clearly differentiate the off-set reporting dates and explain that the CCR may be used for Tier 3 reporting only for PN violations that occurred during the last 12 months relative to the CCR publication date.

Response: The final rule gives water systems the option of providing an annual notice summarizing all Tier 3 violations; the rule also gives community water systems the option to use the CCR to give initial public notice for violations occurring during the previous twelve months, provided the CCR meets the timing, content, and distribution requirements for public notification. The *Public Notification Handbook* will provide system operators with suggestions on how to coordinate Tier 3 notices with the CCR.

Des Moines Water Works (1.07): DMWW agrees with EPA's proposed approach to allow a public water system to use the Consumer Confidence Report (CCR) to list annual Tier 3 violations and situations. This method of public notification allows a public water system to reduce the costs of providing notification and provides an adequate measure to do so. In our opinion, many of the violations a public water system incurs would be classified as a Tier 3 violation or situation. To allow a CCR to fulfill public notification requirements for these violations and situations lessens the burden on public water systems.

Response: EPA agrees and has continued to provide for this option in the final rule.

Massachusetts DEP (1.08): If a water system is going to use its CCR as the reporting mechanism for Tier 3 violations, it must distribute the CCR through direct mail or use another means of direct delivery. Water systems with mailing waivers shouldn't be allowed to use their CCRs as the public notice of a Tier 3 violation. Although good faith efforts are supposed to ensure that those consumers who don't receive a CCR through direct delivery see a copy of the report, public notices should be treated differently. Tier 3 violations, although they don't pose an acute health risk, should be distributed through public notice requirements. If the CCR option is used, the primacy agency must insure that those public water systems directly deliver their CCRs.

Response: EPA agrees with the commenter. The rule and *Public Notification Handbook* will clarify that CCRs may only be used for public notification if public notification delivery requirements are met.

Commission of Public Works, City of Spartanburg, SC (1.10): Proposed requirements for Tier 3 Public Notice (141.204), Special Notice of Data Availability for Unregulated Contaminants (141.207), and Special Notice for Exceedance of the SMCL for Fluoride (141.208) have much in common with requirements of the Consumer Confidence Report Rule. The situations proposed to require notification in these three classes carry a low risk of adverse effects on human health.

While SWS strongly supports the consumer's right to know any pertinent information about drinking water quality, SWS believes the items included in these classes of notification are already adequately addressed, and the consumer's right to know adequately protected, by the Consumer Confidence Report Rule which already requires annual reporting of items covered by these three classes of notification. The proposed Public Notification Rule requirements will result in unnecessary duplication of effort and redundancy of reporting, without significantly improving protection of the water consumer's health. SWS therefore recommends that proposed requirements for Tier 3 Public Notice, Special Notice of Data Availability for Unregulated Contaminants, and Special Notice for Exceedance of the SMCL for Fluoride be modified so that inclusion of these items in the earliest Consumer Confidence Report following the time the water system learns of a situation requiring one of these three notices will satisfy the requirements of the Public Notification Rule.

Response: EPA agrees with the commenter that notices of data availability for unregulated contaminants, and special notice for exceedance of the SMCL for fluoride could be included in the CCR, as long as the timing and content requirements of the PN rule are met. However, notice must be provided within one year— this is the deadline specified in Section 1414 of SDWA. EPA encourages systems to do what they can to coordinate Tier 3 notices with their CCRs, and intends to provide guidance on how to accomplish this in the *Public Notification Handbook*.

Consumer Federation of America (1.11): We do not support including that annual notification in the text of the CCR. The large number of less serious monitoring violations to be reported would crowd and confuse the "big picture" Consumer Confidence Report. Instead, the annual Tier 3 Public Notice to all customers should be made in a separate document either in its own mailing or as an enclosure in the mailing of the Consumer Confidence Report.

Response: EPA disagrees with the commenter. The Agency encourages systems to make use of the CCR or an annual report to distribute Tier 3 notices. EPA believes the two documents can be combined because PNs and CCRs provide similar information, although their messages are different. Combining the two documents can be more efficient for the water system without reducing the effectiveness of either. EPA notes that the CCR can be used only where doing so would meet the timing, content, and delivery requirements for public notification.

Missouri Department of Natural Resources (1.13): For the relatively few deserving community systems for which annual notice in the CCR is sufficient, please keep it simple and allow a Tier 3 violation to be listed this way even if more than 12 months lapses. This way a system with a January monitoring violation would be allowed the same latitude as a system with a violation later in the calendar year. No more than 18-months could lapse since the CCR's will be due out by July 1 following the calendar year in question. If public notification truly can wait 12 months, another 6 months will not hurt. Also tracking would be most tedious if this flexibility is not allowed.

Use of an annual notice summarizing all Tier 3 violations must be at the discretion of the state agency instead [of] an option allowed to systems. For example, as part of a bilateral compliance agreement, public notice for multiple months would be allowed.

Response: EPA considered extending the deadline for Tier 3 notices to 18 months but has decided to stay with the proposed 12-month deadline. EPA believes the one-year deadline is justified because the violations and situations in Tier 3 are non-serious. EPA believes that notification of these violations or situations is more a right-to-know issue than a public health concern. EPA rejected extending the Tier 3 deadline to 18 months because the SDWA Amendments specify a deadline of no more than one year and this is sufficient time to make this information available. EPA notes that nothing precludes a system operator from publishing the CCR before July 1 to allow inclusion of public notices of violations that occur in the second half of the previous calendar year. In response to the commenter's request that use of annual notices be at the primacy agency's discretion, EPA notes that the primacy agency has authority to elevate any violation to Tier 2 or Tier 1. Primacy agencies would be able to track compliance with Tier 3 public notification via the system's certification that the PN requirements have been met.

American Water Works Association (1.14): AWWA supports the use of an annual report of violations rather than individual notices twelve months after each violation. An entire series of notices dilutes the importance of these violations. AWWA also supports the use of the Consumer Confidence Report (CCR) to meet the Tier 3 annual requirements.

Response: EPA agrees and has continued to provide for this in the final rule.

City of Phoenix, Water Services Department (1.18): This will not work when a violation occurs in the months of January through June. Beginning in the year 2000, the CCR will be due annually in July. If you wait until then to report the violation that occurred in the months of January through June of the previous year, you will violate this rule. When a violation occurs in the months of January through June, would a water system have to provide a public notice within 12 months AND report the violation in the CCR, OR provide a public notice, only? We would recommend that the water system report Tier 3 violations within 12 months of occurrence, and include it in the CCR for that year.

Response: EPA acknowledges that there are some difficulties in using the CCR to distribute some public notices. However, where the timing of violations allows it, EPA does recommend using the CCR because doing so would be less costly for the water system. Furthermore, annual notices would be less redundant and be more likely to get consumers' attention. EPA also notes that there is nothing preventing a system from including a violation that occurs between January and July in the CCR, even if it is not from the calendar year covered by the report. If a violation occurs between January and July, a system would have to provide a

public notice within 12 months (possibly by including it in the CCR issued in July for the previous calendar year), but it would still have to be included in the CCR again the following year. The *Public Notification Handbook* will provide system operators with suggestions on how to coordinate Tier 3 notices with the CCR.

Oregon Health Division (1.20): This is a logical way to meet Tier 3 requirements, and helps align the PNR with CCR requirements. However, the rule is somewhat confusing in coordinating “annual” notice for Tier 3 with CCR reporting. For example, water systems shouldn’t be penalized if the CCR is published more than 12 months after a violation because of the timing of the CCR Annual Report in Lieu of individual notices - An excellent way to effectively implement the requirement. Too many notices on different frequencies will only cause confusion. Community water systems can use the CCR, and an annual report could be used by other systems.

Response: The CCR may not be used for PN unless the Tier 3 violation included in it occurred within the 12 months prior to publishing of the CCR. This is because Section 1414 of SDWA provides a 12-month deadline for PN reporting. The rule and *Public Notification Handbook* will clarify this issue. EPA agrees with the commenter concerning annual notice instead of individual notices.

San Francisco Public Utilities Commission (1.22): Due to the logistics of preparing and distributing the annual CCR, it is possible that Tier 3 violations that occur early in the calendar year may not be communicated to the public within the proposed 12-month period since the CCR deadline is July of the following year (up to 18 months later). While the SFPUC agrees with EPA that the CCR is the most appropriate document to present Tier 3 public notices, the SFPUC urges the EPA to consider extending the Tier 3 deadline to 18 months to allow such violations to be included in the annual CCR.

Response: EPA considered extending the deadline for Tier 3 notices to 18 months but has decided to stay with the proposed 12-month deadline. This is the deadline specified in Section 1414 of SDWA. The final rule gives water systems the option of using the CCR to give initial public notice for violations occurring during the previous twelve months, provided the CCR meets the timing, content, and distribution requirements for public notification. The advantages of using the CCR or 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. EPA strongly recommends that public water systems make use of the annual notice option. The *Public Notification Handbook* will provide system operators with suggestions on how to coordinate Tier 3 notices with the CCR.

Association of State Drinking Water Administrators (1.23): ASDWA is concerned that use of the CCR as the recommended method of delivery for Tier 3 notices will cause significant confusion for many systems because of the conflicting time frames. ASDWA offers two options

to alleviate this situation: 1) Allow Tier 3 notices to be reported within 18 months, thus allowing systems to include the information in their CCRs without violating the 12 month versus annual requirements; or 2) Allow systems to use an annual reporting clock (versus a 12 month clock) for Tier 3 violations to coincide with the annual requirement for the CCR. ASDWA considers either of these options to be preferable to that recommended in the proposal.

Response: EPA considered extending the deadline for Tier 3 notices to 18 months but has decided to stay with the proposed 12-month deadline. This is the deadline specified in Section 1414 of SDWA. The final rule gives water systems the option of using the CCR to give initial public notice for violations occurring during the previous twelve months, provided the CCR meets the timing, content, and distribution requirements for public notification. The advantages of using the CCR or 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. EPA strongly recommends that public water systems make use of the annual notice option. The *Public Notification Handbook* will provide system operators with suggestions on how to coordinate Tier 3 notices with the CCR.

Natural Resources Defense Council (1.24): The provision encouraging systems to include their public notices in their annual RTK Report (CCRs) rather than as stand alone, distinct documents, ignores the differences between the two documents. The Right to Know Reports are only required to go to PWS customers (with certain requirements to make good faith efforts to reach non-bill paying consumers) and are intended to report the annual state of the system that serves. In these, the system must report any contaminants in the water, possible sources of these, and any variances and exemptions. They contain information on a range of issues including the water source, and can contain any other information the system wishes to include.

The notices required in the Public Notification rule serve a much narrower and important purpose. They are intended to capture the readers attention, specifically and simply describe the existing (or recently existing if now corrected) problem, warn of risks and possible health effects, and inform all persons served by the system directly or indirectly of what the system has done to or will do to correct the problem. These reports should not be buried among the information contained in the CCRs. Consumers need timely information prominently presented that they can readily understand.

In addition, it should be noted that in amending this section of the SDWA, Congress explicitly adopted two separate, freestanding annual reporting requirements on the PN requirement, the other the RTK Report requirement. If Congress had wished to have PN and RTK reports, which are required by the same section of the SDWA, consolidated, Congress could and would have said so. Instead, the separate purposes behind these two provisions (general versus very specific) lead to the separate, important requirements. . . .

RTK Reports are only mailed to water system customers (with certain good faith efforts to reach non-bill paying consumers who are not customers), whereas the PN provision of the Safe Drinking Water Act requires notice be provided to all persons served. Mailing PNs in the RTK Reports to customers would not achieve the required statutory end. Similarly, we urge the agency to reject the mailing of Tier Three notices as bill stuffers as we are concerned these important notices may be overlooked.

Response: PNs and CCRs provide similar information, although their messages are different. Combining the two documents can be more efficient for the water system without reducing the effectiveness of either. Congress did not prohibit the combination of the PN and CCR, and EPA believes that it has discretion to allow this. EPA notes that the CCR can be used only where doing so would meet the timing, content, and delivery requirements for public notification. The *Public Notification Handbook* will provide system operators with suggestions on how to effectively coordinate Tier 3 notices with the CCR. Regarding the commenter's concern that bill stuffers would not draw adequate attention, EPA notes that part 141.205(c)(2)(iii) requires that notices not be formatted in a way that defeats the purpose of the notice.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania agrees that an annual report and/or a consumer confidence report are suitable ways to give annual notice of any Tier 3 violations at CWSs and some NTNCWSs.

Response: EPA gives community water systems the option to use the CCR to give initial public notice for violations occurring during the previous twelve months, provided the CCR meets the timing, content, and distribution requirements for public notification. The advantages of using the CCR or 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. EPA strongly recommends that public water systems make use of the annual notice option.

New Hampshire Department of Environmental Services (1.28): Although we can see the benefits of a three tier notification process, we do not agree that water systems should be given up to a year to report what is currently defined as tier three violations (such as monitoring and reporting violations (M/Rs)). Our program spends a great deal of time stressing the importance of monitoring on a timely basis and working with systems to avoid M/R violations. We feel that allowing up to a year to report a monitoring error undermines our efforts. Also, by requiring a quick turnaround time for M/R public notice (such as required under Tier 2 notification (30 days)), we believe that it helps us achieve better monitoring compliance. Many systems are motivated to sample on time if they know that public notice will be required promptly if compliance doesn't occur. We believe that our enforcement tracking abilities will suffer if a year is allowed to elapse between violation and notice. Also we believe that consumers should be notified promptly when an error has occurred so that proper measures can be taken immediately

to rectify the situation. . .Based on these same reasons, we are also not in favor of using the Consumer Confidence Report (CCR) as a vehicle to notify for initial violations.

Response: EPA considered extending the deadline for Tier 3 notices to 18 months but has decided to stay with the proposed 12-month deadline. EPA believes the one-year deadline is justified because the violations and situations in Tier 3 are non-serious. EPA believes that notification of these violations or situations is more a right-to-know issue than a public health concern. EPA rejected extending the Tier 3 deadline to 18 months because the SDWA Amendments specify a deadline of no more than one year and this is sufficient time to make this information available. EPA notes that nothing precludes a system operator from publishing the CCR before July 1 to allow inclusion of public notices of violations that occur in the first half of the previous calendar year.

Virginia Department of Health (1.29): [W]e support the use of the CCR for meeting PN requirements for all Tier 3 violations that occurred in the previous calendar year rather than just within 12 months of CCR publication. This would mean that PN might be given up to 18 months after some Tier 3 violations had occurred. The difference between 12 months and 18 months is insignificant.

Response: EPA considered extending the deadline for Tier 3 notices to 18 months but has decided to stay with the proposed 12-month deadline. This is the deadline specified in Section 1414 of SDWA. The final rule gives water systems the option of using the CCR to give initial public notice for violations occurring during the previous twelve months, provided the CCR meets the timing, content, and distribution requirements for public notification. The advantages of using the CCR or 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. EPA strongly recommends that public water systems make use of the annual notice option. The *Public Notification Handbook* will provide system operators with suggestions on how to coordinate Tier 3 notices with the CCR.

Iowa Department of Natural Resources (1.30): Inclusion of the violation into the CCR and thus meeting the public notification requirement through that mechanism, will only work for violations incurred from July 1 - December 31 each year, since the CCR is supposed to contain data from the reporting year and up to nine years previous to the reporting year. It is not supposed to contain violations that occur after the CCR calendar year reporting period and before the CCR is published (which is by July 1st of the year following the calendar year reporting period). Violations that occur between January 1st and whenever the PWS publishes its CCR (July 1st at the latest) would not be solely published in the CCR in order to meet the 12-month deadline. The IDNR suggests that the period be shortened to a 90-day period, similar to the existing rule, and that no exception be made for solely publishing it in the CCR as a means to notify the public. Additionally, it will make tracking the public notice response difficult for the

primacy agency if they are required to read the CCR of every CWS with a single violation in order to determine compliance with the public notice rules. EPA has made no provisions to the primacy agencies for this added requirement.

In light of the previously made comments about inclusion of the public notice in the CCR, provision should be made in the CCR rules under subpart O that mailing waivers for systems less than 10,000 and 500 in population are not available to any system which has incurred a violation under subpart Q. It should also be reiterated in 141.204(d) that the CCR mailing waivers are not available for any CWS that has had a Tier 3 violation. In Iowa, we do not allow CCR mailing waivers for any CWS with a Tier 1 or 2 violation. It does not serve the intent by Congress of the new public notification/awareness initiatives to allow mailing waivers for systems in violation with the NPDWR. . . .

If a CWS uses the CCR to provide the Tier 3 public notice, and no CCR is distributed, what actions are required of the PWS?

Response: EPA believes the one-year deadline is justified because the violations and situations in Tier 3 are non-serious. EPA believes that notification of these violations or situations is more a right-to-know issue than a public health concern. There is nothing preventing a system from including a violation that occurs between January and July in the CCR, even if it is not from the calendar year covered by the report. If a violation occurs between January and July, a system would have to provide a public notice within 12 months (possibly by including it in the CCR issued in July for the previous calendar year), but it would still have to be included in the CCR again the following year. The PN rule does not allow the use of the CCR for public notification unless public notification delivery requirements are met. Systems which want to make use of mailing waivers may not include public notices in their CCRs. Primacy agencies would be able to track compliance with Tier 3 public notification via the system's certification that the PN requirements have been met.

Utah DEQ, Division of Drinking Water (1.31): Utah supports the longer time frame for public notice for monitoring violations. In fact if it is EPA intention to consolidate Tier 3 public notice with the CCR, the CCR may not be sent out for up to 18 months. . . Utah recommends that EPA extend the time frame for public notice for Tier 3 violations to 18 months for community water systems to allow the notice to be included in the CCR.

Response: EPA considered extending the deadline for Tier 3 notices to 18 months but has decided to stay with the proposed 12-month deadline. This is the deadline specified in Section 1414 of SDWA. The final rule gives water systems the option of using the CCR to give initial public notice for violations occurring during the previous twelve months, provided the CCR meets the timing, content, and distribution requirements for public notification. The advantages of using the CCR or 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. EPA strongly recommends that public water systems make use of the annual notice option. The *Public Notification Handbook* will provide system operators with suggestions on how to coordinate Tier 3 notices with the CCR.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): CWD believes that the Consumer Confidence Report should be used to issue the notice to customers for those violations that are not immediately dangerous to life and health. This rule requires that violations be included, so why should a duplicate list be created and sent to customers separately?

Response: EPA agrees with the commenter and is recommending that systems use the CCR to distribute Tier 3 public notices wherever possible. EPA believes the two documents can be combined because they provide similar information, although their messages are different. EPA also believes that this approach is more efficient for water systems. EPA notes that the CCR can be used only where doing so would meet the timing, content, and delivery requirements for public notification.

Minnesota Department of Health (1.40): The proposed public notification rule allows Consumer Confidence Reports (CCR) to be used to summarize Tier 3 violations; however, the restrictions attached to this option means that a CCR may be used to summarize Tier 3 violations in some, but not all, situations. This creates the potential for confusion among water systems. We feel it would be better either to remove the restrictions so that a CCR can be used to summarize all Tier 3 violations or to eliminate this as an option altogether.

First, under the proposed rule, the CCR will have to be mailed or hand-delivered to persons served for it to satisfy public notification requirements. All systems serving fewer than 10,000 people (which, in Minnesota, comprises nearly 95 percent of the community water systems) have other distribution options for the CCR beyond mailing or hand delivery. Although they will satisfy CCR requirements if they use alternative distribution options, they will not have complied with public notification requirements if they use the CCR to summarize Tier 3 violations.

In addition, the proposed rule states that the CCR can be used to summarize only Tier 3 violations which have occurred within 12 months of distribution. This means that only Tier 3 violations occurring after a certain point in the year (realistically, from some point between April and July) could be summarized in the CCR.

If the intent is for the CCR to be a primary means of notification of Tier 3 violations, the rule should be written to allow it to include all Tier 3 violations (not just those that occur after a certain point in the year) -and through all types of allowable distribution of the CCR. Otherwise, we recommend not allowing the CCR to be used at all to summarize Tier 3 violations; rather, the current manner of notification for monitoring and reporting violations should remain in place.

To allow the CCR to be used for Tier 3 violations--but only under certain conditions--will cause great confusion among community water systems, and will lead to less, rather than greater, compliance with the Public Notification Rule as many systems will mistakenly use the CCR and be under the belief that they have satisfied the requirements for notification when, in fact, they have not due to timing or distribution considerations.

In addition to the confusion this will cause, we are concerned about how difficult and complicated it will make the tracking of notifications of Tier 3 violations for our compliance officers. Under the current rule, they merely have to ensure that such notification was performed within a specified period of the violation. Under the proposed rule, if the notification is done through the CCR, we will have to take into account the date of the Tier 3 violation, the date that the CCR was distributed to the system's customers, and also, the type of distribution that was done.

Either allow all CCRs to be used for summarizing all Tier 3 violations from the preceding year--regardless of the exact timing or type of distribution---or don't allow the CCRs to be used for this purpose at all. To do it in such a halfway manner will only cause great confusion and create a record keeping nightmare for our compliance staff.

Response: EPA intends to continue recommending that systems use the CCR to distribute Tier 3 notices wherever possible. EPA believes the two documents can be combined because they provide similar information, although their messages are different. EPA also believes that this approach is more efficient for water systems. However, if operators find combining the documents to be confusing, nothing in the rule prevents them from issuing separate documents. EPA cannot extend the Tier 3 deadline to 18 months because the SDWA Amendments specify a deadline of no more than one year. EPA notes that the CCR can be used only where doing so would meet the timing, content, and delivery requirements for public notification. Primacy agencies would be able to track compliance with Tier 3 public notification via the system's certification that the PN requirements have been met.

City of Chandler (AZ), Office of the City Attorney (1.41): The one (1) year time period for Tier 3 Public Notice (see Section 141.204(b) and (d)) is not always practicable if such notice is to be included in the CCR. Tier 3 violations that occur in the first or second quarter of a year may be out of sync with the CCR calendar year reporting period since the CCR is published before July 1 following that calendar year. The rule should be set up to encourage the use of the CCR to provide such notices. Extending this time period to 15 or 18 months for Tier 3 violations would ensure the viability of using the CCR as the mechanism of choice for providing such notices. Unnecessarily adding separate notices only serves to dilute the impact of the notices received by water customers.

Response: EPA considered extending the deadline for Tier 3 notices to 18 months but has decided to stay with the proposed 12-month deadline. This is the deadline

specified in Section 1414 of SDWA. The final rule gives water systems the option of using the CCR to give initial public notice for violations occurring during the previous twelve months, provided the CCR meets the timing, content, and distribution requirements for public notification. The advantages of using the CCR or 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. EPA strongly recommends that public water systems make use of the annual notice option. The *Public Notification Handbook* will provide system operators with suggestions on how to coordinate Tier 3 notices with the CCR.

Akron (OH) Public Utilities Bureau (2.4): APUB agrees with the rule as written including . . . the option to allow public water systems to provide an annual report of Tier 3 violations in lieu of individual notices twelve months after each violation [and] . . . the use of the Consumer Confidence Report to meet the Tier 3 public notification requirements for the method of delivery of the Tier 3 notices

Response: EPA agrees and has continued to provide for this in the final rule.

Adrianna Quintero, Natural Resources Defense Council (at DC meeting) (E.2): CCRs should not be used for reporting Tier 3 violations. CCRs contain so much other distracting information that consumers would not pay attention to the monitoring violations. Isn't the idea of the public notification rule that the notice be accessible and quick and easy to read, no matter what tier the violation falls into?

Response: EPA disagrees that the CCR would distract consumers from information on violations. The CCR gives consumers a context for the information in a public notice and is easy to read. EPA is recommending that systems use the CCR to distribute Tier 3 notices wherever possible. EPA believes the two documents can be combined because they provide similar information, although their messages are different. The violations and situations in Tier 3 are non-serious violations, and the CCR is an effective way to communicate public notice for these violations or situations. EPA notes that the CCR can be used only where doing so would meet the timing, content, and delivery requirements for public notification.

Phyllis Rowe, Arizona Consumers Council (at Phoenix meeting) (E.4): The CCR should be in a table format and be simple to read. Including monitoring violations would make the CCR more confusing. Monitoring violations should be in a separate notice, since they make up 90 percent of all violations.

Response: EPA notes that any monitoring and testing procedure violations that occur during the year are required to be included in CCRs, regardless of whether the CCR is used for PN. Monitoring and testing procedure violations included in

the CCR are not required to be in tabular format, although systems may do so if they choose. Standard language for monitoring and testing procedure violations must still be included, however.

Unidentified participant at Phoenix meeting (E.4): Recommending use of the CCRs to distribute Tier 3 notices may encourage a violation if the timing of the CCR would exceed the 12-month deadline. Can the CCR deadline be changed?

Response: EPA considered extending the deadline for Tier 3 notices to 18 months but has decided to stay with the proposed 12-month deadline. EPA rejected extending the Tier 3 deadline to 18 months because the SDWA Amendments specify a deadline of no more than one year and this is sufficient time to make this information available. EPA notes that nothing precludes a system operator from publishing the CCR before July 1 to allow inclusion of public notices of violations that occur in the first half of the previous calendar year.

Topic 15: 141.205 (a) What elements must be included in the public notice for violations of National Primary Drinking Water Regulations (NPDWR), including the monitoring and testing procedure requirements?

Comments are requested on the list of elements in the proposal, the four performance standards identified for how the notices must be presented, and the more specific requirement for public water systems to communicate with large non-English speaking populations about the importance of the public notice when violations occur. (26 FR 25978)

Comments:

Oregon Health Division (1.20): These seem reasonable.

Response: EPA has retained this approach in the final rule.

Association of State Drinking Water Administrators (1.23): ASDWA requests that the “required ten elements” for public notification be clarified to reflect the fact that, as described, all ten cannot be included in most Tier 3 notices. ASDWA suggests that a separate paragraph be included to note the special needs of these notices in identifying and describing appropriate health effects such as for failure to monitor and how to address populations at risk from, for example, late reporting of a testing procedure.

Response: The ten elements specified in the PN rule apply to all National Primary Drinking Water Regulations, and are to be addressed as appropriate. If, for example, there is no population at risk, the notice should state this. EPA has designed the rule to give systems the flexibility to create an accurate and understandable notice.

Iowa Department of Natural Resources (1.30): There is also a change from the existing mandatory public notice language where typical sources of contamination are no longer listed in this new public notice language. While those sources are listed in the annual CCR, it would seem beneficial to the public in learning about these possible sources in the public notice rather than solely in the CCR. Noncommunities do not publish a CCR, and so that affected public would never be told of these sources. The IDNR supports the reinstatement of the possible causes of the contaminant back into the mandatory public notice language, whether in a different table or as part of the health effects language.

Response: EPA is not requiring systems to list possible or known sources of contamination. The purpose of a public notice is to alert consumers to problems with their drinking water; the focus of the notice is the health effects from drinking water violations. Public notices cover only the most essential issues necessary to give people the information they need to protect their health. Operators are free to add other information to their notices, including possible or

known sources of contamination. Information on the source water could also be included in the description of what the system is doing to remedy the violation. EPA believes that this information is more appropriate in the CCR.

Maryland Department of the Environment (1.34): Maryland supports the ten elements of the notice.

Response: EPA agrees and has retained the ten elements in the final rule.

University of Florida, Soil and Water Science Department (2.1): The required elements of a public notice need to be relaxed for templates prepared for low-literacy audiences. In the rewrite of the fecal coliform template that I gave you at the public hearing, I left out some of the “required elements” because they would only confuse adult poor readers.

Response: Except for the health effects language, which may not be altered, the text describing the ten elements may be tailored to any audience; however, EPA believes that each of the ten required elements must be addressed in some manner.

Unidentified participant at DC meeting (E.2): Notices should include the source of the contamination.

Response: EPA is not requiring systems to list possible or known sources of contamination. The purpose of a public notice is to alert consumers to problems with their drinking water; the focus of the notice is the health effects from drinking water violations. Public notices cover only the most essential issues necessary to give people the information they need to protect their health. Operators are free to add other information to their notices, including possible or known sources of contamination. Information on the source water could also be included in the description of what the system is doing to remedy the violation. EPA believes that this information is more appropriate in the CCR.

141.205 (a)(1) A description of the violation

Comments:

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania has reviewed the request for comments found at the end of this section. We find the requirement to include the contaminant level when it is applicable, such as with an MCL violation, to have merit. However, there is concern that no direction is given to suppliers regarding the unit of measurement to use. Currently, suppliers must report compliance sample results in mg/L while in the CCR, suppliers must report in CCR values, which may be less than mg/L. Since only one contaminant is usually involved in a Tier 1 or Tier 2 PN, it is strongly recommended that the supplier be required to use the compliance reporting value in mg/L. This would reduce the risk of math conversion errors and provide consistency with the compliance determination process.

Response: EPA has not required the use of specific units in public notices. Systems or states that want to require whole numbers may do so on their own. EPA's intent is that public notices and CCRs be as consistent as possible.

Carroll County (MD) Health Department Bureau of Environmental Health (1.27): First, actual contaminant levels will have to be included in the notices for all M.C.L. violations. Currently, that is not done for coliform/fecal coliform notices.

Response: The standard for coliform/fecal coliform violations specifies a minimum number of allowable samples that can test positive in a given month. The sample notices in the *Public Notification Handbook* describe these violations in this manner.

Lehigh County (PA) Authority (1.38): The Consumer Confidence Report regulation requires utilities to convert MCLS, MCLGS and detected contaminant levels into whole numbers, but the Proposed Public Notification Rule does not. The two rules should be consistent to ensure proper public education.

Response: Although EPA has not required the use of specific units in public notices, systems may use whole numbers and states may require this. EPA recommends consistency between public notices and other communications issued by water systems. If operators feel that communicating in a way that is different from that in the CCR is more effective, they are free to do so.

University of Florida, Soil and Water Science Department (2.1): . . .maximum contaminant level (MCL) would mean nothing to low-literacy audiences and may not mean anything to good readers, either.

Response: A PWS is free to define the term maximum contaminant level or MCL in the notice. EPA is using this term to maintain consistency.

141.205 (a)(2) When the violation occurred

Comments: None.

141.205 (a)(3) Health effects language

EPA is requesting comment on the proposal to use the CCR standard health effects language to meet the public notification requirement. In particular, EPA is soliciting comment on specific situations or violations where the CCR language is believed to be inappropriate or incomplete. Recommendations for alternative language for such situations would also be helpful. (64 FR 25978)

Note: comments related to mandatory health effects language are included under Section 141.205 (d)(1).

141.205 (a)(4) The population at risk

Comments:

Mike Mecke (1.01): Education & warnings should be made mandatory regarding any possibilities of AIDS, chemotherapy patients, or other immune-deficient persons becoming exposed to crypto or other dangerous pathogens. Information should be made readily available at all times (and updated) providing info [sic] on infection prevention for these persons. All systems.

Response: Public notices are required to include information on populations at risk from the violation, including chemotherapy patients, or other immune-deficient persons, where appropriate. EPA agrees that additional information might be useful to the public; however, public notices are not the appropriate forum for providing broad public education concerning the risks faced by these populations. In the *Public Notification Handbook*, EPA plans to recommend to operators that they inform public health agencies of violations.

City of Phoenix, Water Services Department (1.18): We believe this phrase can be interpreted in various ways. For example, some have interpreted the phrase in its broadest way, meaning all persons who receive drinking water from the system, while other have interpreted it in the narrowest way, meaning only those persons within the system likely to be affected. It is our opinion that an interpretation closer to the latter, more narrow approach, should be specified. Our reason is based on the fact that the city of Phoenix has a number of water treatment plants. Each generally serves a specific area of the city. We also have wells which supplement only a small portion of the area served by a treatment plant. If a contaminant were found at a well, it would have no effect on the vast majority of customers. Thus, it is logical that the notification should be targeted for those customers at risk and not others. We propose that the rule say: "The population at risk [those directly affected by the violation if it is limited to a specific identifiable portion of the water system's area], including subpopulations . . ."

Response: EPA disagrees that this requirement should be changed. By population at risk, EPA does not mean the population affected, rather those people who may experience more severe effects if exposed to the contaminant than the rest of the population. For example, infants are more likely to be affected by elevated nitrate levels. In the *Public Notification Handbook*, the population at risk is listed in the templates, where applicable.

City of Chandler (AZ), Office of the City Attorney (1.41): It is inappropriate to require public water systems to develop language regarding the notice content requirements set forth in Sections 141.205(a)(3)-(6) and, as such, those requirements should be eliminated. If there are

potential health effects on populations at risk etc. that EPA thinks should be discussed, why doesn't EPA include such language in the "standard language" that EPA requires to be in the notice. Presumably, EPA has already studied these effects when establishing mcl's. Water systems should not have to make this determination on a parameter by parameter basis only to open themselves up to second guessing by EPA as to the determinations made.

Response: EPA disagrees that requirements at 141.205(a)(3)-(6) should be eliminated. Standard health effects language is provided in Appendix B to Subpart Q. For some contaminants, this standard language identifies portions of the population who are particularly susceptible to the health effects of a contaminant (e.g., infants or the elderly). The templates in the *Public Notification Handbook* provide suggested language for system to use, including the elements the commenter mentions, e.g., the need to use alternative water supplies and actions consumers should take.

Unidentified participant at Phoenix meeting (E.4): The requirement for identifying the population at risk should not apply to Tier 3 notices.

Response: This element is required in the SDWA for all notices. The PWS should describe the population at risk based on the specific violation and the seriousness of the violation. If there is no population at risk due to the violation, the notice should state this.

141.205 (a)(5) Whether alternative water supplies should be used

Comments: See comment from the City of Chandler under 141.205(a)(4).

141.205 (a)(6) What actions consumers should take

Comments: See comment from the City of Chandler under 141.205(a)(4).

141.205 (a)(7) What the system is doing to correct the violation

Comments: None.

141.205 (a)(8) When the water system expects to return to compliance

Comments:

City of Phoenix, Water Services Department (1.18): We believe there are cases when it is impossible to make a specific statement. For example, if there has been an E. Coli violation, tests must be conducted to learn the cause/source of the bacteria. Almost always studies conducted to determine the cause take longer than the 24 hours within which notice must be given, so no estimate can be made about how long it will take to correct the situation. In many other cases, the

source cannot be found, but repeated testing shows there is no longer any bacteria in the water system. Consequently, when such cases arise, we recommend the following language be substituted: "When the water system expects to return to compliance, or, if such an estimate cannot be made, that the water system state that testing is underway to determine the cause of the problem and determine action needed to return to compliance, and that customers will be notified when compliance is achieved."

Response: EPA proposed that notices include an estimated return to compliance to give consumers an idea of how long it might take to solve the problem. A specific date is not necessary but an estimated time span is. For instance, coliform violations could take a week or more, while chemical violations could take months. EPA encourages but does not require systems to actually tell their consumers when they do return to compliance. EPA's regulations do not hold water system operators accountable if they do not return to compliance by the date they cite on the notice. "Return to compliance" is not specifically defined in the rule because states might have varying standards on when systems have returned to compliance. In the *Public Notification Handbook*, EPA encourages systems to call their primacy agencies for a determination of whether they are back in compliance.

Carroll County (MD) Health Department Bureau of Environmental Health (1.27): Notices must include "when the system expects to return to compliance". Often predicting this is difficult if not impossible, especially when investigations of groundwater contamination are lengthy. Putting this estimate in the notice would lead to the expectation that compliance would be achieved by that date. This may place pressure on the system to do a "quick fix" and not really address the problem.

Response: EPA proposed that notices include an estimated return to compliance to give consumers an idea of how long it might take to solve the problem. A specific date is not necessary but an estimated time span is. For instance, coliform violations could take a week or more, while chemical violations could take months. EPA encourages but does not require systems to actually tell their consumers when they do return to compliance. EPA's regulations do not hold water system operators accountable if they do not return to compliance by the date they cite on the notice. "Return to compliance" is not specifically defined in the rule because states might have varying standards on when systems have returned to compliance. In the *Public Notification Handbook*, EPA encourages systems to call their primacy agencies for a determination of whether they are back in compliance.

Renee Hall, Virginia Department of Health (at DC meeting) (E.2): How can a system know when it will be compliant again when it has an outbreak and it is doing additional testing? The notice could say "in a few weeks." But what if the problem is still going on in a few weeks?

Response: EPA proposed that notices include an estimated return to compliance to give consumers an idea of how long it might take to solve the problem. A specific date is not necessary but an estimated time span is. For instance, coliform violations could take a week or more, while chemical violations could take months. EPA encourages but does not require systems to actually tell their consumers when they do return to compliance or if there is a delay in returning to compliance. EPA's regulations do not hold water system operators accountable if they do not return to compliance by the date they cite on the notice. "Return to compliance" is not specifically defined in the rule because states might have varying standards on when systems have returned to compliance. In the *Public Notification Handbook*, EPA encourages systems to call their primacy agencies for a determination of whether they are back in compliance.

Unidentified participant at Phoenix meeting (E.4): Systems probably will not know within 24 hours how long it will take to fix the problem. It is not a good idea to include an estimate, because consumers may start drinking the water on that date whether the problem is corrected or not.

Response: EPA proposed that notices include an estimated return to compliance to give consumers an idea of how long it might take to solve the problem. A specific date is not necessary but an estimated time span is. For instance, coliform violations could take a week or more, while chemical violations could take months. EPA encourages but does not require systems to actually tell their consumers when they do return to compliance. EPA's regulations do not hold water system operators accountable if they do not return to compliance by the date they cite on the notice. "Return to compliance" is not specifically defined in the rule because states might have varying standards on when systems have returned to compliance. In the *Public Notification Handbook*, EPA encourages systems to call their primacy agencies for a determination of whether they are back in compliance.

141.205 (a)(9) Water system contact

Comments:

Missouri Department of Natural Resources (1.13): In addition to the phone number of the water system designee, it would be advisable to require the phone number of the primacy agency also be given. A lot of the public may not be aware, for example, that DNR regulates public water systems rather than the Department of Health. On the public notice forms we send out, we give the phone number of the DNR regional office that serves the system, which hopefully would not mean a long-distance phone call for customers, and also the phone number of the Public Drinking Water Program in Jefferson City.

Response: EPA disagrees that public notices should include the phone number of the primacy agency. Unlike Missouri DNR, many primacy agencies object to having their telephone number on a public notice since this could result in numerous calls about a violation and a great burden to the primacy agency. Rather, EPA believes that the focus of a public notice for water quality violations should be the system.

Maryland Department of the Environment (1.34): The name of the owner/operator should be added to the ninth element of the notice.

Response: EPA agrees that it would be beneficial to require the system name and address and name of the operator or designee (such as customer service). This would help consumers who write a letter to the operator instead of contacting the system by telephone. EPA has added the name, business address, and phone number of the water system owner, operator, or designee to the rule language at 141.205(a)(9).

141.205 (a)(10) A statement to encourage distribution of the notice

Note: comments related to the standard language to encourage distribution are included under Section 141.205(d)(3).

Topic 16: 141.205 (b) What elements must be included in the public notice for public water systems operating under a variance or exemption?

Comments:

Carroll County (MD) Health Department Bureau of Environmental Health (1.27): Another tier 3 condition is a system that operates under a variance or exception [sic]. Should all of these be posted, including those with a “Bottled Water System” classification? Current postings do not meet the content requirements of this proposal. Does this type of notice apply in a situation where a tanker for potable water is authorized for temporary periods? Those facilities are probably already posted for some other violation. Would we post 2 notices or just keep up the other notices?

Response: This type of notice would apply in the water tanker situation the commenter describes. Public notice is required for all variances or exemptions granted under Section 1415 and 1416 of the SDWA. If a system is required by a state or EPA to provide bottled water under enforcement or other authority, public notice is required under the PN rule for the violation, not separately for the bottled water.

Topic 17: 141.205 (c) How is the public notice to be presented?

Comments:

Indiana DEM (1.04): In addition, the performance standards will also be useful to systems trying to draft a notice and to primacy agencies trying to determine the completeness and adequacy of a public notice.

Response: EPA agrees and has retained these standards in the final rule. EPA's *Public Notification Handbook* will provide further guidance to systems as they prepare public notices.

Oregon Health Division (1.20): [The] Four Performance Standards [are] Also reasonable.

Response: EPA agrees and has retained these standards in the final rule.

Maryland Department of the Environment (1.34): Maryland supports the four performance standards. [However, for (1), "displayed in a conspicuous place;"] the system should be allowed to describe the means of display in correspondence to the State.

Response: EPA feels that the phrase "must be displayed conspicuously (where applicable)" is unclear, i.e., does it apply to newspapers or posted notices? Therefore, the Agency has decided to change "where applicable" to "when printed or posted" to clarify the intent of this requirement. The system may describe the means of displaying the notice in its correspondence to the State.

City of Chandler (AZ) Office of the City Attorney (1.41): There are several somewhat vague provisions that leave public water systems at risk. For example, Section 141.205(c)(1)(ii) provides that the notice "must not contain overly technical language or very small print." The subject matter, however, is technical in nature and it is difficult to determine at what point an accurate description is "overly technical." Similarly, if the concern is "very small print" why not just set forth a minimum print size?

Response: EPA agrees that communicating a message that is somewhat technical in nature poses a challenge to systems. The *Public Notification Handbook* provides guidance to water systems on how to present the message in a clear and understandable way that meets all the requirements of the PN rule. Violation-specific templates provide guidelines on layout of the notices.

141.205 (c)(2) Multilingual Requirements

Comments:

Indiana DEM (1.04): It is also useful to require at a minimum a statement in any language spoken (or read) by a significant portion of the population of a water system that the information is important and that they should have someone help them understand what is being communicated (by translation or having someone who can answer their questions about the drinking water in their language).

Response: EPA agrees. Appendix C of the *Public Notification Handbook* contains statements in several languages relating to the importance of the message in a public notice. EPA invites anyone who has additional translations to submit them to the Agency.

Washington State Department of Health, Division of Drinking Water (1.06): The proposed rule requires primacy agencies to determine for public water systems what constitutes a large proportion of non-English speaking populations. As with the Consumer Confidence Report regulation, this determination makes it difficult for states to honor the Civil Rights Act while not overburdening water systems that must provide translations that address the importance of the notice. The proposed rule states that the draft Public Notification (PN) Handbook contains sample language regarding the importance of the notice and that Tier 1 notices are provided in Spanish. We feel that EPA should provide numerous sample statements in a variety of languages in the PN Handbook for use by purveyors regardless of the proportion of non-English speaking populations served.

Response: The final rule requires that public water systems serving a large proportion of non-English speaking consumers 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 language. The multilingual requirement in the final rule is identical to the multilingual provision in the CCR rule. It requires systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, to provide multilingual notices. Where the primacy agency has *not* determined what constitutes a large proportion of non-English speaking consumers, the public water system must make its own determination and must provide this information in the public notice as appropriate to reach non-English speaking persons served by the water system. 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. EPA is aware that many systems currently go beyond the multilingual notice requirements of the PN rule, and the Agency encourages these systems to continue to do so. The *Public Notification Handbook* will contain sample language regarding the importance of the notice in various languages as well as complete sample Tier 1 public

notices in Spanish. EPA offers its Web site as a clearing house for translated public notices and invites anyone who has additional translations to submit them to the Agency.

City of Phoenix, Water Services Department (1.18): Will the primacy agency determine what is a large proportion of non-English speaking consumers (what percent is considered a large proportion)? Will the agency inform the water systems what other languages to provide in the public notice, besides English, or is it up to the water system to determine the percentage of the non-English speaking consumers?

Response: The final rule requires that public water systems serving a large proportion of non-English speaking consumers 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 language. The multilingual requirement in the final rule is identical to the multilingual provision in the CCR rule. It requires systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, to provide multilingual notices. Where the primacy agency has *not* determined what constitutes a large proportion of non-English speaking consumers, the public water system must make this determination and must provide this information in the public notice as appropriate to reach non-English speaking persons served by the water system. 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. EPA is aware that many systems currently go beyond the multilingual notice requirements of the PN rule, and the Agency encourages these systems to continue to do so. The *Public Notification Handbook* will contain sample language regarding the importance of the notice in various languages as well as complete sample Tier 1 public notices in Spanish. EPA offers its Web site as a clearing house for translated public notices and invites anyone who has additional translations to submit them to the Agency.

Oregon Health Division (1.20): This provision seems overly complicated and will be difficult for States to implement.

Response: The final rule requires that public water systems serving a large proportion of non-English speaking consumers 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 language. The multilingual requirement in the final rule is identical to the multilingual provision in the CCR rule. It requires systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, to provide multilingual notices. Where the primacy agency has *not* determined what constitutes a large proportion of non-English speaking consumers, the public water system must make this determination and provide this information in the public notice as appropriate to reach non-English speaking persons served by the water

system. 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. EPA is aware that many systems currently go beyond the multilingual notice requirements of the PN rule, and the Agency encourages these systems to continue to do so. The *Public Notification Handbook* will contain sample language regarding the importance of the notice in various languages as well as complete sample Tier 1 public notices in Spanish. EPA offers its Web site as a clearing house for translated public notices and invites anyone who has additional translations to submit them to the Agency.

Iowa Department of Natural Resources (1.30): EPA has continued to use the phrase "large proportion of non-English speaking consumers," as was used in the CCR rules, and offers no guidance to the states as to what is meant by that phrase. The IDNR requests that guidance be provided in this issue as to when the PWS should be required to provide the translated public notice and CCR into the non-English language.

Response: The final rule requires that public water systems serving a large proportion of non-English speaking consumers 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 language. The multilingual requirement in the final rule is identical to the multilingual provision in the CCR rule. It requires systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, to provide multilingual notices. Where the primacy agency has *not* determined what constitutes a large proportion of non-English speaking consumers, the public water system must make this determination and provide this information in the public notice as appropriate to reach non-English speaking persons served by the water system. 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. EPA is aware that many systems currently go beyond the multilingual notice requirements of the PN rule, and the Agency encourages these systems to continue to do so. The *Public Notification Handbook* will contain sample language regarding the importance of the notice in various languages as well as complete sample Tier 1 public notices in Spanish. EPA offers its Web site as a clearing house for translated public notices and invites anyone who has additional translations to submit them to the Agency.

Unidentified participant at DC meeting (E.2): What are the population criteria for requiring multilingual notices?

Response: The final rule requires that public water systems serving a large proportion of non-English speaking consumers 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 language. The multilingual requirement in the final rule is identical to the multilingual provision in the CCR rule. It requires systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, to provide multilingual notices. Where the primacy agency has *not* determined what constitutes a large proportion of non-English speaking consumers, the public water system must make this determination and provide this information in the public notice as appropriate to reach non-English speaking persons served by the water system. 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. EPA is aware that many systems currently go beyond the multilingual notice requirements of the PN rule, and the Agency encourages these systems to continue to do so. The *Public Notification Handbook* will contain sample language regarding the importance of the notice in various languages as well as complete sample Tier 1 public notices in Spanish. EPA offers its Web site as a clearing house for translated public notices and invites anyone who has additional translations to submit them to the Agency.

Adrianna Quintero, NRDC (at DC meeting) (E.2): Multilingual notices should be there for everyone who needs one; this is the only way to meet the requirement to reach all persons served. The decision on what languages need to be used would be an implementation issue.

Response: The final rule requires that public water systems serving a large proportion of non-English speaking consumers 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 language. The multilingual requirement in the final rule is identical to the multilingual provision in the CCR rule. It requires systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, to provide multilingual notices. Where the primacy agency has *not* determined what constitutes a large proportion of non-English speaking consumers, the public water system must make this determination and provide this information in the public notice as appropriate to reach non-English speaking persons served by the water system. 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. EPA is aware that many systems currently go beyond the multilingual notice requirements of the PN rule, and the Agency encourages these systems to continue to do so. The *Public Notification Handbook* will contain sample language regarding the importance of the notice in various languages as well as complete sample Tier 1 public notices in Spanish. EPA offers its Web site as a clearing house for translated public notices and invites anyone who has additional translations to submit them to the Agency.

Unidentified participant at Phoenix meeting (E.4): Given the rapid turnaround for issuing a Tier 1 notice and the fact that notices must be approved by water system management (including legal counsel), approval of translations into Spanish makes 24-hour notification hard.

Response: Appendix C of the *Public Notification Handbook* contains statements in several languages relating to the importance of the message in a public notice. In addition, the handbook includes templates for notices of fecal coliform /*E. coli* or nitrate violations that have been translated into Spanish. EPA offers its Web site as a clearing house for translated public notices and invites anyone who has additional translations to submit them to the Agency.

William Randell, Valle Verde Water Company (at Phoenix meeting) (E.4): Many consumers do not read English, and something needs to be done to translate notices for these people.

Response: Appendix C of the *Public Notification Handbook* contains statements in several languages relating to the importance of the message in a public notice. The final rule requires that public water systems serving a large proportion of non-English speaking consumers 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 language. The multilingual requirement in the final rule is identical to the multilingual provision in the CCR rule. It requires systems serving a large proportion of non-English speaking consumers, as determined by the primacy agency, to provide multilingual notices. Where the primacy agency has *not* determined what constitutes a large proportion of non-English speaking consumers, the public water system must make this determination and provide this information in the public notice as appropriate to reach non-English speaking persons served by the water system. 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. EPA is aware that many systems currently go beyond the multilingual notice requirements of the PN rule, and the Agency encourages these systems to continue to do so. The *Public Notification Handbook* will contain sample language regarding the importance of the notice in various languages as well as complete sample Tier 1 public notices in Spanish. EPA offers its Web site as a clearing house for translated public notices and invites anyone who has additional translations to submit them to the Agency.

Topic 18: 141.205 (d) What standard language must public water systems include in their public notice?

Comments:

University of Florida, Soil and Water Sciences Department (2.1): My comments relate to the “standard language” mandatory in the Tier 1, Tier 2, and Tier 3 public notices. For a large part of the U.S. population, as I pointed out during my testimony at the public hearing in Washington, D.C. on June 3rd, this language is useless. I think the regulations should be changed to say the language is mandatory except in notifications prepared for low-literacy audiences. This exception is necessary to allow water entities to prepare notifications in very simple language and even to omit some of the mandatory information that would only confuse and overwhelm low-literacy audiences. . .

Response: EPA disagrees that the standard language would confuse readers. EPA has field-tested the language in the public notices, and believes that it is understandable. Public notices include information on whom to contact for additional information; in the *Public Notification Handbook*, EPA will encourage operators to use these contacts as a vehicle for explaining the public notice to consumers who do not understand it, in the same way that information would be translated for people who do not read or understand English. The text surrounding the standard language may be tailored to any audience; however the standard language is required, and EPA believes that it must be included in the notice.

141.205 (d)(1) Standard health effects language

Comments:

Indiana DEM (1.04): Regarding the ten elements required in a public notice for violations of the NPDWR, there are some instances where failure to collect a sample may not have a specific health effect (i.e., large water systems (serving > 50,000) monitoring for water quality parameters under the Lead and Copper rule may not have ever exceeded the lead or copper action levels, however failure to collect the samples may require health effects language for lead and or copper). . .

It is a very good idea to use the same health effects language in the public notification (PN) rule as is used in the Consumer Confidence Report (CCR) rule. You could probably use the same reference in both rules and avoid having identical language in two locations in your rule. In addition, this would allow for only having to change one Appendix instead of two when new rules are promulgated. EPA would need to determine which format to provide this Appendix in also. The current CCR rule lists the health effects and the proposed PN rule has them in table format. The table format is probably easier for the general public to read and understand. The

current regulations for the CCR rule do not contain the information in 80-86 of the proposed PN rule, nor were they promulgated with the final Disinfection By-Products rule.

Response: EPA appreciates the commenter's support, and has decided to keep the language consistent with the health effects language in the CCR. EPA intends to amend the CCR rule to include health effects language for contaminants associated with the final Disinfectants/Disinfection Byproducts rule. In response to the commenter's first point, EPA wishes to clarify that no health effects language is required in public notices for monitoring and testing procedure violations; however, there is standard language specifically for monitoring and testing procedure violations.

Washington State Department of Health, Division of Drinking Water (1.06): The proposed standard health effects language satisfies the intent of the Consumer Confidence Report regulation, but falls short of the intent of the PN rule. At the same time, we acknowledge that it is desirable to have one set of health effects language for both PN and CCR applications.

Response: EPA has decided to keep the health effects language consistent with that used in the CCR, because the Agency 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.

Des Moines Water Works (1.07): DMWW supports EPA's approach to use the health effects language for MCL or MRDL violations (as required in the CCR) to meet public notification requirements, provided that EPA allows for a public water system to tailor its language to supplement the context of the specific public notice. The language EPA is proposing provides clear and consistent language, thereby helping to increase public understanding.

Response: EPA has decided to keep the health effects language consistent with that used in the CCR. EPA notes that states have the option to change health effects language if they see a need to do so. EPA also notes that nothing in the rule precludes a state or PWS from supplementing the standard language so long as it does not contain language that nullifies the purpose of the notice. EPA believes that the standard language will be most effective where the water system supplements it with a clear explanation of what the violation meant and how it was rectified.

Massachusetts DEP (1.08): It is imperative that the proposed rule retains the requirement that public notices for MCL and treatment technique violations use mandatory health effects language to explain any health risks posed by the violation. Although the Consumer Confidence Report (CCR) will contain this information, the CCR is an annual report. The public notices will provide immediate violation information and should always contain the appropriate health effects language.

Response: EPA agrees and is planning to keep the health effects language consistent with that used in the CCR. EPA also notes that nothing in the rule precludes a state or PWS from supplementing the standard language so long as it does not contain language that nullifies the purpose of the notice. EPA believes that the standard language will be most effective where the water system supplements it with a clear explanation of what the violation meant and how it was rectified.

Missouri Department of Natural Resources (1.13): EPA's emphasis on aligning the mandatory language required in the public notice to that of the CCR again shows how little attention has been focused on noncommunity systems, for whom a CCR is not required.

For the contaminants that are Group A carcinogens, the language is too lax for an exceedence of the MCL.

Response: EPA has decided to require the same health effects language as is used in the CCR. This language indicates that there is a probability for the contaminant causing cancer and is appropriate for both Group A and Group B carcinogens. EPA also notes that states have the option to change health effects language if they see a need to do so. EPA wishes to note that the fact that CCR language does not apply to NCWS does not mean that the language is inappropriate.

American Water Works Association (1.14): AWWA supports using the CCR health effects language in the notices. This language was debated at length during the negotiations for the CCR regulation. This language represents a balanced perspective and does not need to be modified at this time. . .

AWWA commends EPA for matching up the proposed regulation with the CCR in the six areas listed. Specifically, AWWA recommends using the CCR health effects language in the public notices. This language was debated at length during the negotiations for the CCR regulation. This language represents a balanced perspective and does not need to be modified at this time.

Response: EPA agrees and has decided to require the same health effects language as is used in the CCR.

Association of California Water Agencies (1.16): Although individual species of trihalomethanes and trihaloacetic acids are not included in the Tier 2 violation reporting

requirements, it is not clear why they are in Appendices A and B. . . EPA should clarify what, if any, public notification requirements apply to disinfection by-product species, and remove them from the Appendices if there are no notification requirements, because their presence may be confusing to state regulatory agencies and drinking water agencies.

EPA should commit to establishing a process for the routine review and update of the health effects language of Appendix B to reflect the most current scientific consensus on these contaminants.

Response: EPA agrees with the commenter on the need for review of the health effects language and intends to periodically review the health effects language and update it if necessary. In the process of proposing the CCR rule, EPA reviewed the health effects in EPA's Integrated Risk Information System (IRIS), which is a peer-reviewed compilation of the latest health information regarding contaminants. The Agency made some changes based on this information. It should be noted, however, that health effects language does not, and is not intended to, catalog all possible health effects for each contaminant. Rather, it is intended to inform consumers of the most significant and probable health effects associated with the contaminant in drinking water.

Chemical Manufacturers Association (1.17): [*Note: CMA submitted over 100 pages of comments on di(2-ethylhexyl)adipate (DEHA) and di(2-ethylhexyl)phthalate (DEHP). The following comments are from CMA's executive summary.*] The Panel believes that the draft health effects statements mischaracterize the potential health risks of DEHA and DEHP, and should be modified to avoid unnecessary concern among drinking water consumers. . .

It is important that the health effects statements provide consumers with sufficient information about potential adverse health effects related to drinking water so that they can make reasonably informed decisions about protecting their health in the face of current (or recent) violations.

It is also important that the health effects statements not overstate risks and thereby cause unnecessary and unfounded concern among drinking water consumers, especially since one or a few violations of the maximum contaminant level (MCL) within a year are extremely unlikely to cause adverse health effects.

The Panel supports including in the health effects statements the language "people who drink water containing [compound] in excess of the MCL over many years," as this language helps put the hazards associated with isolated exceedances in proper perspective. However, the Panel believes the health effects statements for DEHA and DEHP also should continue to acknowledge that adverse effects have been observed only in rodents exposed to very high doses of the chemical.

The draft health effects statements for DEHA and DEHP mischaracterize the health risks of these chemicals in drinking water in other respects, and they should be revised to avoid misleading consumers of drinking water and causing undue alarm.

For DEHA, the health effects statement should not refer to "reproductive difficulties," and the reference to "general toxic effects" should be qualified so that consumers will know that only relatively mild effects (e.g., reductions in body weight) have been observed in rodents at very high doses. The health effects statement for DEHA should be consistent with EPA's prior determination under EPCRA that "several chronic and subchronic feeding studies in rats and mice show that DEHA is not highly toxic," and this specific statement should be included in the health effects statement to give consumers accurate and helpful information.

For DEHP, the health effects statement should not include cancer as a possible effect, notwithstanding EPA's outdated cancer classification for DEHP, as reported in IRIS. Extensive scientific evidence has been developed since EPA's classification in 1987, and numerous independent scientists have concluded that DEHP is highly unlikely to cause cancer in humans at anticipated exposure levels. Statements by EPA scientists support this conclusion for DEHP. The Panel believes the reference to a possible cancer hazard should be removed from the health effects statement for DEHP. At the very least, EPA should tell consumers what the scientific evidence clearly shows and what EPA scientists and other independent scientists have expressly stated in journal articles and other written documents: the relevance of liver tumors observed in rats and mice at high doses for human health hazard assessment is "questionable," and a human cancer hazard under anticipated exposure levels is "highly unlikely."

Response: The health effects language for DEHA and DEHP is consistent with the most recent Agency Integrated Risk Information System (IRIS), document for each chemical. Early in the process of developing the health effects language for the Consumer Confidence Rule, EPA's Office of Water decided that IRIS documents are the best standard to use in developing the health effects language for drinking water contaminants because they represent Agency consensus. EPA does intend to periodically review the health effects language for consumer confidence reports. If there is a change in the IRIS documentation for either DEHA or DEHP at the time of the next review, the language for one or both contaminants can be modified to reflect a new IRIS assessment.

Oregon Health Division (1.20): It is important for the PNR and CCR to be consistent. If situations are discovered where CCR language is incomplete or inappropriate, the States should be able to deal with it case-by-case, rather than prescribing more language in the PNR.

Response: EPA agrees and has decided to keep the health effects language in the CCR and public notification rules consistent. EPA also notes that states have the option to change health effects language if they see a need to do so.

Association of State Drinking Water Administrators (1.23): ASDWA suggests that EPA clarify and emphasize that states have the flexibility to consider alternate health effects language such as that currently utilized for public notification. While the language used for the CCR is certainly easy to understand, some states are concerned that it may not effectively convey the seriousness of the contaminant being discussed.

Response: The rule does allow states to modify the language if they see a need to do so, as long as their language provides the same type and amount of information.

Natural Resources Defense Council (1.24): We object to the EPA using the overly cursory language from the RTK [Right to Know] Reports as the sole warning language for public notices of violations. The very brief RTK Report health effects language was developed taking into account space and other limitations that were integral to the adoption of the RTK rule. This cursory treatment of the adverse effects of contaminants found at levels that violate EPA health standards is simply inadequate to fully inform the public of potential health risks. We propose that EPA amend the language as suggested below. Indeed, the SDWA speaks of two types of health effects language: A brief statement in plain language regarding the health concerns that resulted in regulation of such contaminant for RTK Reports, and a clear and readily understandable explanation of the potential adverse effects on human health for PNs. This language suggests that a brief summary of the health issues that caused EPA to regulate a contaminant is adequate for a RTK report, but a lengthier full disclosure of potential health effects is required for the PN. We recommend changes to the proposed health effects language in the attached appendix.

EPA also needs to be sure that the likely source of the contamination which is required to be mentioned in the current PN rules at 40 CFR 141.32(c) is mentioned in the current PN rules. EPA was careful to assure that this occurs in Right to Know reports. This information is even more important in the case of Public Notification. Only when the public is informed as to the source of the contaminant can they bring public pressure to bear on the source of the pollution to solve the problem. EPA should provide default language on the likely sources of contaminants if the system operator does not know the likely source. EPA could simply cross reference the language in the RTK rule on likely contaminant sources. . .

Total coliform: Coliforms are bacteria that . . . may be present. Coliform bacteria are usually found in drinking water as a result of problems with treatment or with the pipes that deliver water. Coliforms were found in our water in more samples than allowed. This means that your water could be contaminated with germs that might cause disease. Symptoms could include diarrhea, cramps, nausea, headaches, and fatigue. There may be a special health risk for infants, young children, and people with severely compromised immune systems. Of course, drinking water is not the only source of germs that can cause these symptoms. ~~Coliforms were found in more samples than allowed and this was a warning of potential problems.~~

EPA's proposed total coliform language is absolutely unacceptable in failing to mention specifically any potential health threat or the possible sources of the TC. This is a serious weakening of current regulations. The proposed language fails even to mention as do the current PN rules that while not necessarily harmful themselves, TC may indicate the presence of disease carrying organisms, and that disease symptoms may include diarrhea, cramps, nausea, etc.

Turbidity: Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a ~~medium for microbial growth~~ place for harmful germs to grow. Our water had too much turbidity in it, a sign of water treatment problems. Turbidity may indicate the presence of disease-causing ~~organisms~~ germs. These ~~organisms~~ germs may include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.

Arsenic: ~~Arsenic causes cancer in people who drink it in their water for several years. Some people who drink water containing arsenic in excess of the MCL over many years also could experience get skin damage or problems with their circulatory system. [Mention likely source of contamination to the best knowledge of the operator]; and may have an increased risk of getting cancer. . .~~

EPA's proposed language on arsenic fails to recognize that Arsenic is a known human carcinogen, and that exposure to arsenic by definition does increase the "risk" of getting cancer. The word risk indicates uncertainty as to outcome but higher probability than zero. Addition of the word "may" to increase the risk is unjustified, particularly for a known carcinogen.

[For all inorganics except copper, volatile organic, and synthetic organic contaminants, and for total coliform, acrylamide, and epichlorohydrin, add]: [Mention likely source of contamination to the best knowledge of the operator.]

[For all contaminants which mention the term "MCL," except for antimony, arsenic, vinyl chloride, beta/photon emitters, alpha emitters, and combined radium, change "MCL" to "EPA standard."]

Asbestos: ~~Some p~~People who drink water . . .

Barium: . . .over many years could ~~experience an increase in their~~ get high blood pressure.

Beryllium: . . .over many years could develop ~~intestinal lesions~~ problems with their intestines.

Cadmium: Some people who drink water containing cadmium ~~more in excess of the MCL~~ cadmium than allowed by the EPA standard could ~~experience~~ get. . .

Fluoride:. . .Children may get ~~mottled teeth~~ brown spots on their teeth. . .

Mercury: . . .over many years could ~~experience~~ get kidney damage. . .

Lead: . . . could develop kidney problems or high blood pressure. Lead in drinking water usually comes from corrosive water leaching lead from water lines or from household plumbing. . . .

Copper: . . . People with Wilson's disease are at special risk and should consult their personal doctor or health care provider. Copper usually gets into the water from corrosive water leaching copper from water lines or household plumbing.

Alachlor: . . . experience anemia, ~~or may~~ and have an increased risk of cancer. . .

Atrazine: . . . or reproductive difficulties. Atrazine has also been shown to cause breast cancer in lab animals exposed to high doses of this pesticide. . . .

Benzo(a)pyrene: . . . may experience reproductive difficulties ~~or may~~ and have an increased risk. . .

Endothall: . . . problems with their stomach or intestines and other problems with their endocrine system. . . .

Pentachlorophenol: . . . could experience problems with their liver or kidneys, and ~~may~~ have an increased risk of getting cancer.

Benzene: Benzene is known to cause cancer in people who are exposed to it for many years. Some people who drink water containing benzene in excess of the MCL EPA standard over many years could experience anemia or decrease in blood platelets, ~~and may have an increased risk of getting cancer.~~ . . .

EPA must acknowledge that benzene is a known human carcinogen and that exposure at any level (not just at levels over the EPA standard) poses a cancer risk.

Vinyl chloride: Vinly [sic] chloride is known to cause cancer in people who are exposed to it for many years. ~~Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.~~ . . .

EPA must acknowledge that these radionuclides are known human carcinogens, and that any exposure (not just exposure to levels over the MCL) poses a cancer risk.

Beta/photon emitters: Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. These beta and photon emitters can cause cancer in people who are exposed for many years. ~~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: Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. They can cause cancer in people exposed to them for many years. 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 (226& 228): ~~Some Radium can cause cancer in 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.~~

Total trihalomethanes: . . .and may have an increased risk of getting cancer. Pregnant women may also be at risk of having a miscarriage or a child with birth defects when exposed to some of these chemicals.

Haloacetic acids: . . .may have an increased risk of developing cancer. Pregnant women may also be at risk of having a miscarriage or a child with birth defects.

Control of DBP precursors (TOC): . . .However, total organic carbon provides a medium for the formation increases the levels of disinfection byproducts. . .

Response: EPA has decided to keep the health effects language consistent with that used in the CCR, because the Agency 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. Regarding the commenter's suggestion to list the source of the contamination, EPA is not requiring systems to include this. The purpose of the public notices is to alert consumers to problems with their drinking water. Public notices cover only the most essential issues necessary to give people the information they need to protect their health. Operators are free to add this to their notices if they wish.

The commenter has offered many changes to the health effects language for various contaminants. In response to similar comments raised during the proposal of the CCR rule, EPA reviewed the health effects in its Integrated Risk Information System (IRIS), which is a peer-reviewed compilation of the latest health information regarding contaminants. The Agency made some changes based on this information. EPA hereby incorporates by reference the CCR responses to comments on the health effects language. In response to the comments on the proposed PN rule offering alternative health effects language 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. In addition, EPA does plan to review the health effects language periodically or in conjunction with development of new drinking water standards or when new evidence becomes available and, if appropriate make any necessary changes.

It should be noted, however, that health effects language does not, and is not intended to, catalog all possible health effects for each contaminant. Rather, it is intended to inform consumers of the most significant and probable health effects associated with the contaminant in drinking water. Regarding the commenter's suggestion on the health effects language for fluoride, EPA has revised the language for this contaminant. The revised fluoride language now includes more specific information on the cosmetic effects of exceedances, including staining of the teeth.

EPA disagrees with the commenter's suggestion to include a list of symptoms associated with total coliform violations (as was included for fecal, turbidity, and SWTR TT violations) because, unlike these other violations, a Total Coliform Rule (TCR) violation without a positive test for fecal coliform (i.e., a non-acute TCR violation) is not in itself a reliable indicator that these disease-causing organisms may be present. Because the negative finding of fecal coliforms for all the total coliform-positive is information known along with the TCR non-acute violation, the presumption is that the particular situation does not indicate the presence of disease-causing organisms. At best, it is an indicator of problems with disinfection, and is not in itself a health risk.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania concurs with EPA's proposal to use the same standard health effects language for both PN and CCR. The inclusion of the 10 required elements of PN found in 141.205(a) are more than adequate to address site specific issues where the standard wording might be considered incomplete. In addition, expanded wording can be included to clarify the required text if the site-specific situation requires it.

Response: EPA agrees and has decided to keep the health effects language in the CCR and public notification rules consistent. EPA also notes that states have the option to change health effects language if they see a need to do so.

Virginia Department of Health (1.29): We agree with the proposal to use the CCR language for public notification. There are no federal restrictions on the state requiring, or the water system including, additional information in the CCR or PN where warranted.

Response: EPA agrees and has decided to keep the health effects language in the CCR and public notification rules consistent. EPA also notes that states have the option to change health effects language if they see a need to do so.

Iowa Department of Natural Resources (1.30): Since all the SDWA microbiological contaminants can cause gastrointestinal illness, it would seem prudent to notify the public of this large target group of people in cases of potential microbiological contamination. The IDNR supports the inclusion of the elderly in the affected populations for microbiological contaminants.

The IDNR suggest [sic] the inclusion of the target population in the health effects, which is identical to that listed in the fecal coliform language, including the elderly.

The IDNR strongly supports the addition of notification of the target population (pregnant women) of this potential problem [nitrate, nitrite, nitrate+nitrite] in the interest of public health protection.

This note applies to the entire appendix, and to the health effects language for the CCR, and is one of our more significant concerns with the public notification rule: While it is important to make the health effects understandable to the public, much of this language seems to further confuse the reader by not telling them enough information as well as implying the risks are minimal.

Listed below are additional comments about specific contaminants:

Total coliform: The language does not include any health effects, nor the affected population. A non-acute total coliform MCL violation indicates that pathways are present for pathogenic organisms in the water supply. These organisms may cause the same health effects in the same affected population as the fecal/E. coli coliform contamination. The IDNR strongly urges the inclusion of the potential health effects language (nausea, cramps, diarrhea, and associated headaches) and targeted population (infants, young children, and people with severely compromised immune systems) in the total coliform health effects language.

All microbiological contaminants: It is commonly understood that elderly persons are a population group which is more susceptible to severe health effects from gastrointestinal illness, similarly to infants.

Turbidity and interim enhanced SWTR contaminants: The IDNR suggest the inclusion of the target population in the health effects, which is identical to that listed in the fecal coliform language, including the elderly.

General note: For the majority of the remaining inorganic, radionuclide, and organic contaminants, the use of "Some people drinking water containing XX well in excess of the MCL over many years" strongly implies that the chance of the average person having a problem is

extremely remote - to the point of making one wonder why they're being told about it. The IDNR does not have a suggestion to make for replacement language, other than to perhaps separate the two ideas into two sentences: the remote possibility of getting ill from low level concentrations of this chemical over a long period of time and the actual health effects.

Nitrate, Nitrite, and Nitrate-Nitrite:

- (a) The health effects language has been "simplified" to the point where it fails to adequately inform the parent or caregiver of the infant under 6 months of age of the acute risk. The health affects [sic] language in the existing rule is very understandable, tells the parent/caregiver the mechanism for the problem, describes the symptoms, indicates the short period in which the problems could occur, encourages the use of alternate water sources, and recommends immediately seeking medical advice if warranted. The IDNR strongly urges the replacement of this new language with the appropriate and much more informative health affects [sic] language of the existing rule.
- (b) Furthermore, there is a very strong suspicion in the medical community, which may have been substantiated to the EPA, National Institutes of Health, or Center for Disease Control's satisfaction by now, that nitrates and nitrites above the MCL can cause spontaneous abortions in pregnant women. As an aside, that effect is also noticed in livestock (pigs, horses, etc.) which also would be of interest to the general public in a farm state with elevated nitrates, such as Iowa.

A note on the general health effects language: When comparing the new language with the existing rule language, it seems that non-cancerous health effects are sometimes eliminated. While there may be more health information available now than when this rule was promulgated, which caused the change in the language, it seems the existing language is more informative than the proposed language. Listed below are just a few examples:

Diquat: Existing health effects language "This chemical has been shown to damage the liver, kidney and gastrointestinal tract and causes cataract formation in laboratory animals." Proposed health effects language eliminates the liver, kidney, and gastrointestinal tract damage, and only lists the cataract formation.

Beryllium: Existing health effects language: "Beryllium compounds have been associated with damage to the bones and lungs and induction of cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. There is limited evidence to suggest that beryllium may pose a cancer risk via drinking water exposure. Therefore, EPA based the health assessment on noncancer effects with an extra uncertainty factor to account for possible carcinogenicity. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time." Proposed health effects language only mentions the possibility of developing intestinal lesions.

Cyanide: Existing health effects language: "This chemical has been shown to damage the spleen, brain and liver of humans fatally poisoned with cyanide." Proposed health effects language mentions only nerve damage or thyroid problems.

Endothall: Existing health effects language: "This chemical has been shown to damage the liver, kidney, gastrointestinal tract and reproductive system of laboratory animals such as rats and mice exposed at high levels over their lifetimes." Proposed health effects language mentions one could experience problems with their stomach or intestines.

With regard to the use of the phrase "reproductive difficulties" in several health effects, the IDNR supports the use of a phrase such as "difficulties with reproductive systems" so that the reader would not make the assumption that the health effect of that contaminant is not solely making conception or reproduction more difficult.

The IDNR supports the idea of making the technical language more understandable, but questions whether EPA has gone too far in its simplification of this language in an effort to make it less alarming to the public. The effect of this simplification is to circumvent the Congressional intent of the consumer "right-to-know" initiatives. Quite a bit of the existing rule language could be deleted as being extraneous, although we have not had indications from our public that it was too difficult to understand. The IDNR also requests that EPA notify the primacy states of the origin of these proposed health effects - was toxicological data reviewed by the appropriate scientific staff/entities in determining these new health effects, especially when some appear to have been deleted from previous public notification language?

Response: The commenter has offered many changes to the health effects language for various contaminants. In response to similar comments raised during the proposal of the CCR rule, EPA reviewed the health effects in its Integrated Risk Information System (IRIS), which is a peer-reviewed compilation of the latest health information regarding contaminants. The Agency made some changes based on this information. EPA hereby incorporates by reference the CCR responses to comments on the health effects language. In response to the comments on the proposed PN rule offering alternative health effects language 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. In addition, EPA does plan to review the health effects language periodically or in conjunction with development of new drinking water standards or when new evidence becomes available and, if appropriate, make any necessary changes.

It should be noted, however, that health effects language does not, and is not intended to, catalog all possible health effects for each contaminant. Rather, it is intended to inform

consumers of the most significant and probable health effects associated with the contaminant in drinking water.

Regarding the comment on the health effects language for total coliform violations, EPA disagrees with the commenter's suggestion to include a list of symptoms associated with total coliform violations (as was included for fecal, turbidity, and SWTR TT violations) because, unlike these other violations, a Total Coliform Rule (TCR) violation without a positive test for fecal coliform (i.e., a non-acute TCR violation) is not in itself a reliable indicator that these disease-causing organisms may be present. Because the negative finding of fecal coliforms for all the total coliform-positive is information known along with the TCR non-acute violation, the presumption is that the particular situation does not indicate the presence of disease-causing organisms. At best, it is an indicator of problems with disinfection, and is not in itself a health risk.

The commenter also alleges that the health effects language for nitrate violations does not adequately convey the risk to infants. The nitrate health effects language states that infants who drink water containing nitrates “could *become seriously ill and, if untreated, may die.*” Regarding the health effects of nitrate exposure to pregnant women or fetuses, the basis of EPA's standard for nitrate does not relate to evidence associated with pregnant women. EPA is still researching this evidence.

The commenter suggests that the health effects language mention populations at risk from some contaminants. EPA responds that the PN rule identifies the population at risk as one of the ten elements required in a public notice. EPA also wishes to note that the *Public Notification Handbook* provides information on the population at risk in templates for nitrate, coliform, and surface water treatment violations. The commenter also asks for information on the evidence underlying the health effects language. EPA notes that fact sheets for every contaminant are available.

Utah DEQ, Division of Drinking Water (1.31): We commend EPA for consolidating the CCR and public notification language as it will reduce the bulk of drinking water rules nationwide and should improve the understanding of current health effects language. . . Utah recommends that EPA proceed with the language in Appendix A to Subpart Q of Part 141 replace the old health effects language in § 141.32(c). This would more clearly communicate the health risk to the consumer when public notice is required by an exceedance of a water quality standard.

Response: EPA agrees and has decided to keep the health effects language in the CCR and public notification rules consistent.

Maryland Department of the Environment (1.34): Maryland supports EPA's proposal to use Consumer Confidence Report (CCR) language for health effects. The current health effects language is long, and it is not consumer friendly.

Response: EPA agrees and has decided to keep the health effects language in the CCR and public notification rules consistent. EPA also notes that states have the option to change health effects language if they see a need to do so.

Association of Metropolitan Water Agencies (1.35): AMWA strongly supports using the same standard health effects language in public notifications as is used in the Consumer Confidence Reports (CCR). It is not logical to have two different sets of health effects language for the same contaminants.

Response: EPA agrees and has decided to keep the health effects language in the CCR and public notification rules consistent. EPA also notes that states have the option to change health effects language if they see a need to do so.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): The standard CCR health effects language should be used. It will be less confusing for customers if they are given the same message whenever the violation is mentioned.

Response: EPA agrees and has decided to keep the health effects language in the CCR and public notification rules consistent. EPA also notes that states have the option to change health effects language if they see a need to do so.

University of Florida, Soil and Water Department (2.1): This language needs to be greatly simplified for low-literacy audiences and for good readers, too. For the former audience, the proposed statements are too detailed. . . [P]eople don't have a lot of time these days—they won't read complex things usually so the simpler the language, the more likely they will read the notice.

Response: EPA notes that the health effects language developed for the CCR rule and used for public notice, was targeted to a 6th to 8th grade reading level. It is intended to be the most simplified possible that still communicates essential health information.

Unidentified participant at Madison meeting (E.1): The health effects language for the fecal coliform violation should include the elderly in the population at risk.

Response: EPA agrees with the commenter and will add "some elderly" to the health effects language for fecal violations to make the language consistent with the list of vulnerable populations for pathogens in drinking water in other outreach materials.

Bob McElmurry, Wisconsin State Lab of Hygiene (at Madison meeting) (E.1): The rule health effects language should explain the risk for gross alpha violations as well as the fact that gross alpha MCLs are actually action levels.

Response: The health effects language for the PN rule needs to be understandable by both low-literacy audiences as well as good readers. Although there is a certain level of risk associated with the alpha-emitting radionuclides, the audience for notices prepared under the PN rule would not understand what that risk really means. Also, although the MCL for gross alpha triggers other evaluations such as levels of radium, this information again would not be of use for the PN audience.

141.205 (d)(2) Standard language for monitoring and testing procedure violations

EPA is soliciting comment on the proposed standard language and welcomes recommendations on alternative language that would effectively inform consumers of the significance of the monitoring violation. Another option would be not to require that any specific language be included for all monitoring violations, but to set a performance standard instead. The performance standard might be that all monitoring violations be explained in a way that appropriately communicates the public health significance of the violation. EPA also requests comment on this alternative approach. (64 FR 25978)

Comments:

Indiana DEM (1.04): Indiana agrees that there should be some requirements for what must be included in a public notice for monitoring and reporting violations. A performance standard may be sufficient, possibly with language that can be used, but is not required verbatim, instead of prescribing exactly what the notice must say. This way water systems would have the choice of using the rule language or their own language that meets the performance standards. This would allow water systems to come up with their own alternative to "**** and we were unable to tell whether your health was at risk during that time". For some contaminants, they may know that there is not a health risk at this time (i.e., for samples required monthly, quarterly, or annually which were collected, but may have been collected slightly late (a system which collected samples in 1993-1997 for nitrate with samples below 5 ppm that missed 1998, but collected a sample early in 1999 which was also below 5 ppm in this situation, it is not likely that the consumers were actually exposed to nitrate). However, in order to leave this out of their notice, the water system should be required to consult with the primacy agency so that the determination as to whether there could have been or likely wasn't a risk to health can be made on a case-by-case basis.

Response: 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. EPA disagrees that systems should be required to consult their primacy agency on Tier 3 violations; such a requirement would be overly burdensome.

Bridgeport (CT) Hydraulic Company (1.12): [W]e believe that a different choice of words than the language "we are unable to tell whether your health was at risk at that time." is needed, We suggest: "Research has indicated that prolonged exposure to this contaminant may pose a health risk. Since exposure was for a limited time, we do not believe a health risk is present. "

Response: EPA agrees that the standard language for monitoring and testing procedure violations should be changed. The statement now reads as follows: "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." EPA revised the language to speak of the potential health effects of failure to monitor in more general terms. The purpose of the phrase is to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health and to raise questions about the significance of the specific monitoring violation. EPA did not use the exact wording the commenter suggests because EPA believes it is inappropriate to make any assumptions about the duration of exposure to contaminants (if any) and whether public health was at risk.

Missouri Department of Natural Resources (1.13): Ironically, the proposed language for the monitoring violations seems a bit strong, especially if it really can wait a year. Currently in Missouri we use the following for TCR monitoring violations: "Bacteriologically-contaminated water can cause a variety of disease symptoms and it is important that drinking water be routinely tested to ensure its safety."

Response: EPA agrees that the standard language for monitoring and testing procedure violations should be changed. The statement now reads as follows: "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." EPA revised the language to speak of the potential health effects of failure to monitor in more general terms. The purpose of the phrase is

to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health and is intended to raise questions about the significance of the specific monitoring violation. EPA did not use the exact wording the commenter suggests; rather, it chose a more generic statement that can apply to all contaminant monitoring. Like the suggested language, EPA's statement asserts the importance of testing in protecting public health.

American Water Works Association (1.14): AWWA supports the standard language for monitoring & reporting violations, particularly the phrase ". . . we are unable to tell whether your health was at risk at that time." The impacts from monitoring and reporting violations MAY OR MAY NOT result in adverse health effects, and there is no need to alarm consumers unnecessarily from this tier of violations. Again, the proposed language represents a balanced perspective and does not need to be modified at this time.

Response: EPA did change the language slightly to be more general. However, the language in the final rule still is consistent with the commenter's recommendation.

City of Phoenix, Water Services Department (1.18): We understand the purpose of the section is to address "stakeholder concerns that consumers may presume that because there is no reported MCL, MRDL, or treatment technique violation that the drinking water provided by their water system is safe." However, we find the required language could be misleading, unduly frightening to some, and, with respect to the technical talents of personnel at EPA, primacy agencies and most water systems, demeaning. To imply that highly trained and experienced personnel cannot draw intelligent conclusions from available data is untrue. For example, if water from a well never has showed [sic] a trace of a specific contaminant and a test is performed a week late, still showing no trace of that contaminant, it is reasonable to assume the contaminant was not present on the prescribed testing date. Saying "we do not know whether a contaminant was present . . ." flies in the face of the basic procedure of testing at specific times rather than continuously. . . . We recommend that the language be modified to reflect the validity of periodic testing by using the following: "Because we ['did not monitor or test' or 'failed to monitor or test completely'] during [compliance period], we cannot be certain no contaminant was present in your drinking water during the time period, but tests before and after the period in question showed ['no contaminant' or 'safe levels of contaminant's named. Consequently, it is reasonable to conclude your health was [not] at risk.

Response: EPA agrees that the standard language for monitoring and testing procedure violations should be changed. The statement now reads as follows: "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." EPA revised the language to speak of the potential health

effects of failure to monitor in more general terms. EPA agrees that, often operators can be reasonably certain that no public health risk resulted from missed testing, and the purpose of the phrase is to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health and to raise questions about the significance of the specific monitoring violation. EPA did not use the exact wording the commenter suggests, however EPA's statement expresses the commenter's point that operators cannot be certain of drinking water quality when required samples are not taken.

Massachusetts Water Resources Authority (1.19): The proposed rule would add mandatory language informing consumers that because the Public Water Supplier ("PWS") did not monitor during a specified compliance period or follow the required testing procedures during the compliance period, the PWS is unable to say whether a particular contaminant was present in the drinking water and is also unable to tell the consumer whether the consumer's health was at risk during this time. MWRA is strongly opposed to the proposed standard language for notifying the public of monitoring or testing procedure violations.

EPA notes that it does not intend, by the proposed mandatory language to alarm consumers unnecessarily. However, we believe that the language, as proposed, will in fact unnecessarily alarm consumers and will increase their anxiety and frustration. The proposed language raises a potential health concern without providing consumers with adequate information to make an informed decision about their actions.

MWRA strongly supports the alternative presented by EPA that sets a performance standard for compliance. By requiring that all monitoring violations be explained in a manner that more appropriately communicates the public health significance of the violation, we believe the PWS, in consultation with the primacy agency and public health officials, can assess the effects of the specific monitoring violation, consider the particular contaminant of concern, type of violation, monitoring frequency, overall quality of the source water and other important variables. This flexible approach is better adapted to the regulatory objectives for this section of meeting the consumer's right-to-know. These notifications should note the importance of monitoring to assess public health on an ongoing basis. The notice would provide the consumer with specific information including the conditions under which the violation occurred, duration, and any corrective action taken by the PWS. Where appropriate, the notice would also provide a reasonable assessment of public health effects.

Response: EPA considered setting a performance standard rather than mandatory standard language in the PN 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 not always be an appropriate presumption. The standard language clearly and simply alerts consumers that lack of monitoring may disguise a potential risk to health and to raise questions about the significance of the specific monitoring violation, not to

alarm consumers unnecessarily, as the commenter fears. EPA notes that operators or primacy agencies are free to add to the standard language where information unique to the system's situation is available.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania supports the option to include standard language for monitoring and testing procedure violations.

Response: EPA agrees and has retained the standard language for monitoring and testing procedure violations in the final rule, somewhat revised based on public comment.

Metro Water District (Tucson, AZ) (1.26): Prefer Alternative Two [performance standard]. Can health effects language be included as well? This seems essential.

Response: 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. EPA cannot include health effects language for every potential contaminant in the standard language monitoring and testing procedure violations; however, operators are free to add the health effects language for a specific contaminant if they are concerned.

New Hampshire Department of Environmental Services (1.28): We would prefer that standardized language be required instead of allowing a performance standard.

Response: EPA agrees and has retained the standard language for monitoring and testing procedure violations in the final rule, somewhat revised based on public comment.

Virginia Department of Health (1.29): Standard language for monitoring/testing violations -- We strongly object to the proposed language because the last part of the sentence (... unable to tell whether your health was at risk ...) is not true in all cases. There are other factors to be considered that may indicate there was no risk whatsoever. Even under perfect monitoring

compliance conditions there are time gaps, some short and some long, between sample results. We suggest a performance standard in this case since there are so many different monitoring violation scenarios.

Response: 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.

Maryland Department of the Environment (1.34): Maryland supports the EPA proposal for inserting the phrase "and we are unable to tell whether your health was at risk during that time" when there are violations related to initial monitoring for new standards, turbidity monitoring, and bacteriological monitoring. States should be allowed flexibility in this area.

Response: In the final rule, EPA changed the language slightly to be more general. However, the language in the final rule still is consistent with the commenter's preference, stating that the operator "cannot be sure of the quality of your drinking water during that time." Regarding state flexibility, EPA notes that primacy agencies can require different standard language as long as it meets the primacy condition of being no less stringent than the federal rule and is approved by EPA.

Association of Metropolitan Water Agencies (1.35): AMWA strongly urges EPA to revise the mandatory monitoring and testing violation language. The phrase "...and we are unable to tell whether your health was at risk during that time" is not necessarily true in all instances. Whether or not a reasonable determination of potential risk can be made depends upon the type of violation, the type of contaminant, the frequency of monitoring, the water source, and/or an assessment of the watershed.

If the violation is because monitoring is a few days late but the monitoring results are negative, the contaminant has chronic rather than acute effects, the contaminant has never been found in the past the source is ground water not subject to rapid changes in contaminant levels or surface water where a watershed assessment indicates no sources for the contaminant, a reasonable

determination would be that the public was not at risk. The bottom line is that there are all sorts of conditions where the statement would not be true and would be alarmist.

AMWA supports language along the lines of the following:

"Because we ['did not monitor or test' or 'failed to monitor or test completely'] during [compliance period], we do not know whether the contaminant was present in your water during the time period, ['and we are unable to tell whether your health was at risk during that time' or for contaminants with chronic health effects only 'but based on (specify reason for being able to reasonably conclude risk was not present) it is unlikely that your health was at risk during that time"].

Response: EPA agrees that the standard language for monitoring and testing procedure violations should be changed. The statement now reads as follows: "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." EPA agrees with the commenter that it is sometimes possible to determine whether the public's health was at risk during the time samples were not taken. Therefore, EPA revised the language to speak of the potential health effects of failure to monitor in more general terms. The purpose of the phrase is to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health and to raise questions about the significance of the specific monitoring violation. EPA did not use the exact wording the commenter suggests, however the language in the final rule still is consistent with the commenter's recommendation.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): CWD favors the performance standard. It should be left to the water system and the primacy agency who have all the facts about the situation to determine the health significance, if any, imparted by the violation. In some cases, historical monitoring data can be sited to show that the source does not contain the contaminant in question. The proposed language is likely to be inflammatory and misunderstood by customers.

Response: 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.

City of Chandler (AZ), Office of the City Attorney (1.41): The standard language for monitoring and testing procedure violations (Section 141.205(d)(2)) is not always appropriate, particularly when read in conjunction with Section 141.205(c)(1)(iv). The "purpose" of a notice should be to accurately present the violation and the potential health risk posed by that violation. The purpose should not be to unnecessarily scare the public by preventing the dissemination of all pertinent information. If, for example, a sample was missed during a period but sampling for both the period before and period after the missed period reflect compliance, and there were no known system changes during the missed period, this type of information should be passed on to the consumer. In fact, under these circumstances, the public water system should be entitled to state its belief that, in light of prior and subsequent sampling there was probably not an elevated level of the contaminant in the drinking water served and the "standard language" modified to read: "However, because . . . we do not conclusively know whether the contaminant was present in the drinking water during that time period, we are unable to tell whether your health was at risk during that time."

Response: EPA agrees that the standard language for monitoring and testing procedure violations should be changed. The statement now reads as follows: "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." EPA agrees with the commenter that it is sometimes possible to determine whether the public's health was at risk during the time samples were not taken, and revised the language to be more general. The purpose of the phrase is to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health and to raise questions about the significance of the specific monitoring violation. EPA did not use the exact wording the commenter suggests, however EPA's statement expresses the commenter's point that operators cannot be certain of drinking water quality when required samples are not taken.

American Water Works Service Co., Inc. (1.46): The mandatory language for Tier 3 violations requires the statement that because of not monitoring properly, it is not possible to tell whether the customer was at risk. We believe this is too prescriptive, and generally unfounded. Because contaminants are routinely measured, missing one monitoring period or one sample out of many

should not lead to the conclusion that health could be at risk. There should be some provision to consider previous monitoring data in the evaluation. For example, only if the previous data showed the levels to be over one half of the MCL should such health risk be implied.

Response: EPA agrees that the standard language for monitoring and testing procedure violations should be changed. The statement now reads as follows: “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.” EPA revised the language to speak of the potential health effects of failure to monitor in more general terms. EPA agrees with the commenter that, often, operators can be reasonably certain that no public health risk resulted from missed testing, and the purpose of the phrase is to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health and to raise questions about the significance of the specific monitoring violation. EPA notes that operators are free to add to the standard language any information to describe their specific circumstances.

University of Florida, Soil and Water Science Department (2.1): Language for monitoring violations. . . Must be greatly modified for low-literacy audiences. This applied also to the wording for fluoride and unregulated contaminant monitoring.

Response: EPA believes that the slightly revised language in the final rule appropriately conveys the message in a simple way while retaining the essential content.

Unidentified participant at DC meeting (E.2): The standard monitoring language as written opens the door for legal claims tying dates the system did not monitor to dates illnesses were reported.

Response: EPA has revised the language to be more general. The purpose of the standard language is to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health and is intended to raise questions about the significance of the specific monitoring violation. EPA believes that people should know about missed monitoring and testing. EPA notes that legal claims (if any) would be tied to the failure to monitor, not the public notice of that failure.

Peter Lukens, North Wales Water Authority (at Allentown meeting) (E.3): The standard monitoring language is not always accurate; often systems do know that public health was not at risk. For example, in the case of THMs where compliance is based on annual averages, one missed sample would not impact the system’s ability to assess whether consumers’ health was at risk.

Response: EPA agrees that the standard language for monitoring and testing procedure violations should be changed. The statement now reads as follows: “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.” EPA revised the language to speak of the potential health effects of failure to monitor in more general terms. EPA agrees with the commenter that, often, operators can be reasonably certain that no public health risk resulted from missed testing, and the purpose of the phrase is to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health and to raise questions about the significance of the specific monitoring violation. EPA notes that operators are free to add to the standard language any information to describe their specific circumstances.

Breakout group participants at Phoenix meeting (E.4): The mandatory language does not work well for multiple violations, especially those with different compliance periods. It would have to say, “Because we did not monitor during 7/99, 10/99, 12/99, and 1/97-12/99, . . .” The dates are confusing because there is some overlap for different contaminant monitoring schedules. The language might have to be provided separately for each contaminant. Another possibility, which the group agreed to use, was to refer to the chart, saying, “Because we did not monitor during the compliance periods shown below. . .” There was some question as to whether this would be considered a modification of the mandatory language. Some also suggested writing separate notices for each contaminant.

Response: EPA agrees that notices of multiple violations with differing compliance dates can be confusing. In the *Public Notification Handbook*, EPA provides a template for notices of monitoring and testing procedure violations. This template is in a table format, with columns for the required sampling frequency, the number of samples taken, when the samples should have been taken, and when the samples were or will be taken. EPA believes that the standard language would still be appropriate.

Jean Melillo, Tucson Water District (at Phoenix meeting) (E.4): The standard language for monitoring violations in the rule is detrimental: most monitoring violations are unlikely to affect public health. The variety of potential monitoring violations calls for more than one uniform statement. The primacy agency could require specific language as a default, or the water system could write its own language with approval from the primacy agency. This would be consistent with the rule’s intention to give primacy agencies flexibility. In addition, for some monitoring results, such as groundwater systems with monitoring violations for VOCs, risk can be inferred during the time monitoring was not done if prior and subsequent results are available.

Response: EPA agrees that the standard language for monitoring and testing procedure violations should be changed. The statement now reads as follows: “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.” EPA revised the language to speak of the potential health effects of failure to monitor in more general terms. EPA agrees with the commenter that, often, operators can be reasonably certain that no public health risk resulted from missed testing, and the purpose of the phrase is to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health and to raise questions about the significance of the specific monitoring violation. EPA notes that operators are free to add to the standard language any information to describe their specific circumstances.

141.205 (d)(3) Standard language to encourage distribution

EPA requests comment on the proposed standard language and would welcome alternative language that aids the water system in reaching all persons involved. (64 FR 25978)

Comments:

Dave Van Fleet (1.03): The word "customers" should be included. The required text should read, If other people receive water from you, such as tenants, residents, patients, students, customers, or employees, it is important that you provide this notice to them by posting it in a conspicuous location or by direct hand or mail delivery.

Response: EPA has revised the standard language to encourage distribution to read 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.” EPA changed the language in response to comments it received. EPA believes the new language is simpler and more generic and it would apply to more situations and encourage wider distribution. EPA did not use the exact wording the commenter suggests; however, EPA believes its statement encourages distribution to “customers” by including businesses in the examples.

Indiana DEM (1.04): It may be useful to include or reference the language provided in the Consumer Confidence Report rule at 40 CFR § 141.155(b) in the Public Notification rule regarding ways the water system can make a good-faith effort to reach consumers who do not receive water bills.

Response: The PN rule requires systems to go beyond the good faith effort to reach consumers who do not receive water bills required in the Consumer Confidence Rule. The PN rule requires operators to use methods reasonably calculated to reach all persons served by the water system. Many of the same ideas for announcing the availability or expanding the distribution of CCRs are also mentioned in the *Public Notification Handbook*.

Missouri Department of Natural Resources (1.13): EPA's effort at reaching tenants, patients etc. is much needed.

Response: EPA agrees and has retained this approach in the final rule. 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.

American Water Works Association (1.14): AWWA supports the proposed language for distribution of notices to consumers, i.e., those beyond the direct customers. The distinction between customers and consumers is clear in both the regulation and the handbook, and the distinction is consistent with the approach taken in the Consumer Confidence Report (CCR). This consistency in the approach needs to be maintained in future regulatory actions.

Response: EPA agrees and has retained this approach in the final rule. 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.

Virginia Department of Health (1.29): PN elements and performance standards -- The elements and performance standards are generally satisfactory, with the exception of element # 10. Requiring the mandatory statement that requests the recipient to distribute the notice is not warranted and is not consistent with any other EPA public water supply requirement. On the other hand, we would have no objection to the mandatory statement if its inclusion completely satisfied the requirement to use other methods reasonably calculated to reach other persons served.

Response: EPA disagrees that the standard language is not warranted. EPA believes that it 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. This includes encouraging wide distribution of the notices by not only businesses and schools, etc. that are water system customers providing drinking water access to employees and customers, but also encouraging that the notice be made available to visitors in individual households. Compliance with this requirement is one of, but not the only, "reasonably-calculated steps" a public water system must take to reach other persons not expected to receive the initial notice. The final rule gives the water system

discretion not to include the distribution language when it determines such a notice is not needed to meet the water system obligation to reach persons served beyond those who receive the initial notice directly.

Iowa Department of Natural Resources (1.30): The IDNR supports the addition of the standard language to encourage provision of the notice to consumers who are not directly billed by the PWS.

Response: EPA agrees and has retained this approach in the final rule. 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.

University of Florida, Soil and Water Sciences Department (2.1): The required statement [sic] “to encourage distribution of the notice to all persons served” absolutely has to be changed for low-literacy audiences and indeed it needs to be reworded even for people who can read. The statement doesn’t bear much resemblance to its [sic] purpose as stated in the regulations.

Response: EPA notes that the language to which the commenter refers is in the PN rule, and is not the text of the statement to be included on a public notice. EPA has slightly revised the standard language in the proposed PN rule. EPA believes the new language is simpler and more generic and it would apply to more situations and encourage wider distribution. EPA has revised the standard language to encourage distribution to read 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.”

Breakout session participants at Madison meeting (E.1): The distribution language (“if other people, such as tenants, residents, patients, students, or employees. . .”) did not seem appropriate for the situation, since the scenario is that the water system is a bar where presumably everyone at the bar would see the notice in the bathroom or on the door or counter. If the language is going to be mandatory for all notices, it should be modified, though the group offered no alternate language.

Response: EPA has decided not to require the distribution language in all situations. It will now be required where applicable. For instance, a notice posted at a restaurant or gas station probably would not need to include the language.

Unidentified participant at Phoenix meeting (E.4): Add the word “customers” to the distribution language and italicize the distribution language in the template so operators know that it is mandatory.

Response: EPA has revised the standard language to encourage distribution to read 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.” EPA changed the language in response to comments it received. EPA believes the new language is simpler and more generic and it would apply to more situations and encourage wider distribution. EPA did not use the exact wording the commenter suggests, however EPA believes its statement encourages distribution to “customers” by including businesses in the examples.

Topic 19: 141.206 Notice to new billing units or new customers

EPA requests comment on the change to the current regulation 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. (64 FR 25979)

Comments:

Indiana DEM (1.04): It is a good idea, in principle, to require all water systems to inform all new customers of all violations, however, it is extremely difficult to track this information, for both the water systems and the primacy agencies. It may also be difficult to identify all new customers, especially in transient noncommunity water systems.

Response: EPA is retaining the requirement for notice to new billing units for ongoing monitoring and testing procedure violations. This provision ensures that new customers of a public water system are made aware of ongoing violations and will make notices more readily available to consumers who would not receive a notice under the current regulation -- EPA believes this is an important right-to-know issue. EPA believes that tracking compliance with this requirement will not be overly difficult for primacy agencies: EPA interprets the certification requirement to mean that systems are also certifying that they will meet future requirements for notifying new customers. EPA does not intend systems to create a new public notice each time a new customer is hooked up to the distribution system.

Missouri Department of Natural Resources (1.13): Residents may move in and out of a community system before ever being notified of monitoring violations. Six-month leases are quite common in central Missouri. DNR feels these people also deserve to be notified of violations, even if they do not reside at a CWS for a full year, particularly those that occur while they are in residence. Public notification should not be left to chance of when a person moves in or out. At noncommunity systems reaching persons present at the time of the violation is even more difficult, but the sooner it is done, the more successful the notice will be. Given the provisions of this section, customers who were present at the time of the violation can easily miss out on the notification, while new customers who happen to arrive at the time a summary notice is given receive grossly outdated information.

Response: EPA is retaining the requirement for notice to new billing units for ongoing monitoring and testing procedure violations. This provision ensures that new customers of a public water system are made aware of ongoing violations and will make notices more readily available to consumers who would not receive a notice under the current regulation. EPA notes that new customers will not receive notice before other customers; this requirement means that new hookups

would be receive notices of ongoing violations for which a notice had already been sent.

American Water Works Association (1.14): AWWA recommends that the additional notification requirement for monitoring and reporting violations for new customers be a recommendation rather than a mandated requirement. Developing a tracking systems [sic] for notification to new customers will be an unnecessary burden for both the utilities and the primacy agencies.

Response: EPA is retaining the requirement for notice to new billing units for ongoing monitoring and testing procedure violations. This provision ensures that new customers of a public water system are made aware of ongoing violations and will make notices more readily available to consumers who would not receive a notice under the current regulation -- EPA believes this is an important right-to-know issue. EPA believes that tracking compliance with this requirement will not be overly difficult for primacy agencies: EPA interprets the certification requirement to mean that systems are also certifying that they will meet future requirements for notifying new customers. EPA does not intend systems to create a new public notice each time a new customer is hooked up to the distribution system.

Oregon Health Division (1.20): **These type of violations [ongoing monitoring and testing procedure violations] do not warrant notification to new customers.** These violations are Tier 3, and therefore best addressed by the annual report or CCR. This is an unreasonable proposal, and would be difficult for the States to monitor.

Response: EPA disagrees that notice to new billing customers is unwarranted-- the Agency sees this notification as an important right-to-know issue, and it is part of the operator's obligation to reach all persons served, regardless of when they move into the distribution area. EPA is retaining the requirement for notice to new billing units for ongoing monitoring and testing procedure violations. This provision ensures that new customers of a public water system are made aware of ongoing violations and will make notices more readily available to consumers who would not receive a notice under the current regulation. One option for systems is to use the CCR for notifying new billing customers of ongoing Tier 3 violations. This would reduce the burden on water systems. EPA notes that new customers will not receive notice before other customers; this requirement means that new hookups would only receive notices of ongoing violations for which a notice had already been issued.

EPA believes that tracking compliance with this requirement will not be overly difficult for primacy agencies: EPA interprets the certification requirement to mean that systems are also certifying that they will meet future requirements for notifying new customers. EPA does not intend for systems to create a new public notice each time a new customer is hooked up to the distribution system.

Association of State Drinking Water Administrators (1.23): ASDWA disagrees with the proposal to require that new billing units receive public notification of ongoing monitoring and testing violations. While this is excellent public policy, it is not a good regulatory requirement. States are unable to provide the level of oversight that would allow them to know when systems were not providing this information. States are not alerted when new billing units are placed on or taken off a system's customer list. Additionally, because monitoring and testing violations fall in Tier 3 (annual reporting), the reported information may be a year or more out of date. Alternatively, because of the annual reporting requirement, new billing units may be the only ones to learn of an ongoing violation in a timely fashion, while the rest of the community does not learn of the problem until 12 months have passed since the incident took place. ASDWA recommends that systems be encouraged rather than required by regulation to share such information or that each new billing unit receive a copy of the system's Consumer Confidence Report.

Response: EPA is retaining the requirement for notice to new billing units for ongoing monitoring and testing procedure violations. This provision ensures that new customers of a public water system are made aware of ongoing violations and will make notices more readily available to consumers who would not receive a notice under the current regulation. One option for systems is to use the CCR for notifying new billing customers of ongoing Tier 3 violations. This would reduce the burden on water systems. EPA believes that tracking compliance with this requirement will not be overly difficult for primacy agencies: EPA interprets the certification requirement to mean that systems are also certifying that they will meet future requirements for notifying new customers. EPA does not intend systems to create a new public notice each time a new customer is hooked up to the distribution system. EPA notes that new customers will not receive notice before other customers; this requirement means that new hookups would only receive notices of ongoing violations for which a notice had already been issued.

Iowa Department of Natural Resources (1.30): Is there any requirement of the PWS to provide documentation to the primacy agency that they've fulfilled this requirement throughout the year?

Response: EPA does not intend systems to create a new public notice each time a new customer is hooked up to the distribution system; EPA interprets the certification requirement to mean that systems are also certifying that they will meet future requirements for notifying new customers.

141.206 (a) What is the requirement for community water systems?

Comments:

Des Moines Water Works (1.07): DMWW supports the requirement that community water systems "give a copy of the most recent public notice for any continuing violation or the

existence of a variance or exemption to all new billing units or new hookups prior to or at the time service begins."

Response: EPA agrees and has retained this provision in the final rule. This provision ensures that new customers of a public water system are made aware of ongoing violations and will make notices more readily available to consumers who would not receive a notice under the current regulation.

141.206 (b) What is the requirement for non-community water systems?

Comments:

Des Moines Water Works (1.07): DMWW supports the requirement for non-community systems to continuously post the violation notice; this will help to ensure that new customers view the content of the notice. Posting increases the chances that a new customer will see the notice and become aware of the violation.

Response: EPA agrees and has retained this provision in the final rule. This provision ensures that new customers of a public water system are made aware of ongoing violations and will make notices more readily available to consumers who would not have received or seen a notice that was initially delivered by hand or posted out of sight of new consumers.

Topic 20: 141.207 Special notice of the availability of unregulated contaminant monitoring results

EPA requests comment on the proposed approach to meet the requirements under Sections 1414(c)(2)(E) and 1445(a)(2)(E). EPA also requests comment on its proposal to shift the reporting frequency announcing the results of unregulated contaminant monitoring from three months to twelve months. (64 FR 25979)

Comments:

City of Chandler (AZ), Office of the City Attorney (1.41): Is/will Tier 3 Public Notice [sic] mandated for failure to take a required sample of an unregulated constituent? If so, will the "standard language" provisions be applicable for such a violation?

Response: Yes. The form and manner of the public notice of the availability of monitoring results for unregulated contaminants must follow the requirements for a Tier 3 public notice prescribed in §141.204. The notice must include all ten required elements. EPA notes that the proposed standard language for monitoring violations has been modified for the final rule. The language now states that the system cannot be sure of the water quality during the period during which monitoring was not done. This language is more applicable to failure to monitor for unregulated contaminants than the proposed language.

141.207 (a) When is the special notice to be given?

Comments:

Des Moines Water Works (1.07): In this section, EPA proposes to change the reporting frequency for unregulated contaminants from 12 months to three months [sic, 3 months to 12 months]. A notice frequency of every three months will dilute the affect [sic] and purpose of the notice. Unregulated contaminants might frequently appear in sampling, but they may not have immediate adverse health effects. Customer receipt every three months of an unregulated contaminant notice having no immediate adverse health affects [sic] may lead to customer apathy with regard to the notice. A consumer will begin to disregard the notices, defeating the very purpose for providing the notice. DMWW does not support the three-month frequency and strongly encourages EPA to maintain the existing 12-month frequency.

Response: EPA wishes to clarify that the PN rule requires notice of the availability of results of monitoring for unregulated contaminants within 12 months, not three as the commenter states.

Coalition for Health, Environment and Economic Rights, et al. (1.09): Given the reduced frequency of monitoring for unregulated contaminants in recent years, and their unknown risks,

OW should at least require that notice of detection of such contaminants be sent to PWS consumers at all opportunities (i.e. add this to Tier 1 and Tier 2 reports, in addition to the proposed annual Tier 3 reports).

Response: EPA disagrees that notice of the availability of results of monitoring for unregulated contaminants should be included in Tier 1 or Tier 2 reports. EPA sees this distribution of information as a right-to-know issue, with a different message than the higher-tier notices. Time is not of the essence in informing consumers that such data are available— this is why EPA has included these notices in Tier 3. EPA wishes to add that nothing precludes an operator from distributing notice of the availability of results of monitoring for unregulated contaminants in less than one year. 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. The final rule makes minor, clarifying changes to reference the new unregulated contaminant monitoring rule (UCMR). 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, reducing the number of notices from four to one.

American Water Works Association (1.14): AWWA supports the change in the reporting requirements of the Unregulated Contaminant Monitoring Rule (UCMR) results from three months to twelve months to better link to the Consumer Confidence Report (CCR).

Response: 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. The final rule makes minor, clarifying changes to reference the new unregulated contaminant monitoring rule (UCMR). 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, reducing the number of notices from four to one.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania supports EPA's proposal to reduce the reporting of the availability of unregulated contaminant monitoring results from 3 to 12 months. In the event an unregulated contaminant is detected at an elevated level which poses an immediate acute health risk, emergency PN would be appropriate.

Response: 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. The final rule makes minor, clarifying changes to reference the new unregulated contaminant monitoring rule (UCMR). 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, reducing the number of notices from four to one.

New Hampshire Department of Environmental Services (1.28): We prefer that the frequency of announcement of unregulated contaminant monitoring results be shifted from 3 to 12 months.

Response: 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. The final rule makes minor, clarifying changes to reference the new unregulated contaminant monitoring rule (UCMR). 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, reducing the number of notices from four to one.

Maryland Department of the Environment (1.34): Maryland supports the EPA proposal to change the frequency of notice from three months to annual so that the notice can be coordinated with the CCR. However, the regulations would need to allow up to 18 months because the CCR deadline is July 1st. If unregulated monitoring is performed in January or February of the previous year, the data should be in the next year's CCR, and up to eighteen months would be needed.

Response: 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. The final rule makes minor, clarifying changes to reference the new unregulated contaminant monitoring rule (UCMR). 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, reducing the number of notices from four to one. EPA is requiring that this notice be distributed within one year; this is required under the SDWA Amendments.

141.207 (b) What is the form and manner of the special notice?

Comments:

Oregon Health Division (1.20): Yes, annual reporting or CCR should be the method of this type of public notice.

Response: In the final rule, the form and manner of the public notice must follow the requirements for a Tier 3 public notice. EPA believes that the PN requirements along with the requirement to include the results of such monitoring (where detected) in the annual CCR, meet the public-right-to-know objective and are protective of public health.

Association of State Drinking Water Administrators (1.23): ASDWA suggests that the notice of availability for unregulated contaminant monitoring would be better positioned in the Consumer Confidence Report (CCR) rather than required as a public notice. ASDWA believes that this

situation does not warrant the level of concern engendered by the requirements of public notification.

Response: Community water systems may include the notice of the availability of the results in the CCR, which already must include unregulated contaminant monitoring results when detected. EPA believes close coordination between the public notification requirement and the CCR reporting requirement for this information will be both more efficient and less confusing to the regulated community and the public.

Virginia Department of Health (1.29): Unregulated contaminant monitoring (UCM) -- We strongly believe that the Consumer Confidence Report can be appropriately utilized to report the availability of UCM results for the previous calendar year for community systems. This would mean that the public would be notified up to 18 months after the results are available, instead of the 12 months required by the proposed rule.

Response: Community water systems may include the notice of the availability of the results in the CCR, which already must include unregulated contaminant monitoring results when detected. EPA believes close coordination between the public notification requirement and the CCR reporting requirement for this information will be both more efficient and less confusing to the regulated community and the public. EPA is requiring that this notice be distributed within one year; this is required under the SDWA Amendments.

Iowa Department of Natural Resources (1.30): The CCR already requires CWS to include any detectable levels of contaminants found in their water during the calendar year, which would include any detected unregulated contaminants. The IDNR does not see the need to require additional public notice other than the CCR for CWS for unregulated contaminants. We do not require data of undetected regulated contaminants to be provided to the consumer - so why would undetected unregulated contaminants (those which have yet to have met the criteria to become regulated contaminants) data be required to be provided to the public? We see no public health benefit in this requirement. In the interest of simplifying the public notice rules, the IDNR supports the elimination of this section, or only apply it to non-transient non-community systems - and allow the CCR to meet the public notice requirement for detected unregulated contaminants.

Response: Community water systems may include the notice of the availability of the results in the CCR, which already must include unregulated contaminant monitoring results when detected. EPA believes close coordination between the public notification requirement and the CCR reporting requirement for this information will be both more efficient and less confusing to the regulated community and the public. EPA adds that reporting of this information in public notice is required under Section 1445 of SDWA.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): CWD believes that the CCR would be the appropriate vehicle for announcing the availability of these results. If any unregulated contaminants were detected, they must be included in the report, so it seems logical that this would be the appropriate place to inform customers how to receive a copy of the full results.

Response: Community water systems may include the notice of the availability of the results in the CCR, which already must include unregulated contaminant monitoring results when detected. EPA believes close coordination between the public notification requirement and the CCR reporting requirement for this information will be both more efficient and less confusing to the regulated community and the public.

Topic 21: 141.208 Special notice for exceedance of the SMCL for fluoride

EPA requests 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 12 months after the exceedance is known is sufficient. (64 FR 25980)

Comments:

American Water Works Association (1.14): AWWA supports the changes to the notification requirements for the fluoride Secondary Maximum Contaminant Level (SMCL).

Response: EPA agrees and has retained these changes in the final rule. The final rule requires community water systems to provide the special notice when they exceed the SMCL of 2 mg/l but do not exceed the MCL of 4 mg/l. EPA believes it is important to retain the existing fluoride SMCL notice requirement. Consumers have a right to know about the cosmetic effects from dental fluorosis that may occur in children from prolonged exposure to drinking water exceeding the fluoride SMCL. EPA has revised 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.

Association of California Water Agencies (1.16): Although EPA's decision to retain reporting requirements for exceedances of the fluoride secondary MCL may be justified, EPA should be aware that this may intensify the national debate on the fluoridation of drinking water.

Response: EPA acknowledges the commenter's concern; however the final rule retains an existing requirement, with minor changes only. The final rule requires community water systems to provide the special notice when they exceed the SMCL of 2 mg/l but do not exceed the MCL of 4 mg/l. EPA believes it is important to retain the existing fluoride SMCL notice requirement. Consumers have a right to know about the cosmetic effects from dental fluorosis that may occur in children from prolonged exposure to drinking water exceeding the fluoride SMCL.

San Francisco Public Utilities Commission (1.22): Short-term exceedance of the fluoride secondary MCL (Section 141.208) poses no health risk unless the fluoride level is excessive. The primacy agency needs the flexibility to exempt water agencies from the public notification requirements when the fluoride level exceeds the secondary MCL for a short period of time.

Response: The final rule requires community water systems to provide the special notice when they exceed the SMCL of 2 mg/l but do not exceed the MCL of 4 mg/l. EPA believes it is important to retain the existing fluoride SMCL notice requirement. Consumers have a right to know about the cosmetic effects

from dental fluorosis that may occur in children from prolonged exposure to drinking water exceeding the fluoride SMCL. Regarding the commenter's point about brief exceedances of the SMCL, EPA does not believe that an exemption from this requirement is appropriate. Systems may explain in their notice the nature of the exceedance and that the situation has been resolved and the risk abated.

Virginia Department of Health (1.29): Mandatory public notification for fluoride, a secondary contaminant, should not be required at all. The water system can decide which, if any, secondary contaminants need special notification to its customers based on system-specific conditions.

Response: The final rule requires community water systems to provide the special notice when they exceed the SMCL of 2 mg/l but do not exceed the MCL of 4 mg/l. 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.

Maryland Department of the Environment (1.34): Maryland supports the EPA proposal to allow the notice to follow Tier 3 requirements, and to simplify the language. Regarding EPA's request for comment on extending the fluoride notice requirements to non-transient noncommunity systems (NTNC), a public notice requirement should not be required currently. A monitoring requirement should be considered before a public notice decision is made. Most children on a NTNC system may consume the water less than half the year (schools - 180 days/year).

Response: EPA has retained the special notice requirement in the final rule. The final rule requires community water systems to provide the special notice when they exceed the SMCL of 2 mg/l but do not exceed the MCL of 4 mg/l. 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. EPA believes it is important to retain the existing fluoride SMCL notice requirement. Consumers have a right to know about the cosmetic effects from dental fluorosis that may occur in children from prolonged exposure to drinking water exceeding the fluoride SMCL. NTNCWS are not 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.

141.208 (a) When is the special notice to be given?

EPA requests 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 12 months after the exceedance is known is sufficient. (64 FR 25980)

Comments:

Des Moines Water Works (1.07): DMWW believes that requiring notice of fluoride exceedance every twelve months is not a sufficient requirement. Fluoride testing results could vary dramatically between 12 month reporting times. If violations were reported every three months, customers would be aware of violations within a closer period of time to the occurrence. DMWW suggests fluoride exceedance notices be required every three months.

Response: EPA has decided to retain the current requirement that the notice be required as soon as practical but no later than 12 months from the date of the exceedance. 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. In the final rule, EPA also explicitly authorizes the primacy agency to require notice sooner and repeat notices more frequently if warranted by the specific situation.

Oregon Health Division (1.20): Retain special public notice for fluoride SMCL - The requirement should be retained. . . Notice to be given 12 months after exceedance - This would be consistent with the CCR and other Tier 3 requirements and is sufficient.

Response: EPA agrees and has retained the special notice as a Tier 3 requirement in the final rule.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania supports EPA's proposal to retain special public notice for exceeding the fluoride SMCL. Pennsylvania has adopted the federal SMCL for fluoride as a primary MCL and would like it to be a tier 2 violation.

Response: EPA has decided to retain the current requirement that the notice be required as soon as practical but no later than 12 months from the date of the exceedance. 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. In the final rule, EPA also explicitly authorizes the primacy agency to require notice sooner and repeat notices more frequently if warranted by the specific situation.

Iowa Department of Natural Resources (1.30): The secondary MCL (SMCL) specifically pertains to children under the age of nine, whose teeth have yet to erupt from the gums. It is not protective of public health to allow a PWS 12 months after an exceedance of the SMCL to provide public notice to the parents and caregivers of these children, given the short time frame in which the damage can occur. The IDNR supports a shorter time period for the notice - such as 90 days.

A fluoride SMCL exceedance should be a Tier 2 violation, due to the health affect [sic] and the target population. The health effect may be cosmetic in nature, but it is definitely in the child's best interest for their parents and caregivers to be informed of this situation in a timely manner. The IDNR supports the change in classification to Tier 2.

Response: EPA has decided to retain the current requirement that the notice be required as soon as practical but no later than 12 months from the date of the exceedance. 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. In the final rule, EPA also explicitly authorizes the primacy agency to require notice sooner and repeat notices more frequently if warranted by the specific situation.

141.208 (b) What is the form and manner of the special notice?

Comments:

Virginia Department of Health (1.29): Assuming that this requirement will remain in the rule, we strongly believe that the Consumer Confidence Report can be appropriately utilized to report any special information on fluoride SMCL exceedances occurring during the previous calendar year for community systems. This would allow up to 18 months after the results are available, instead of the 12 months required by the proposed rule. In addition we believe the mandatory language should be shortened considerably.

Response: In the final rule, EPA has retained the 12-month deadline for notice of fluoride SMCL exceedances. For most violations and situations, a one-year deadline is mandated in the SDWA Amendments. EPA believes that extending the deadline to 18 months for a few provisions would be complicated and confusing. In the final rule, EPA encourages water system operators to use their CCRs to report exceedances of the SMCL for fluoride, provided the timing, content, and delivery requirements of the PN rule are met. EPA does not believe that the mandatory language should be greatly shortened. The Agency reviewed and asked for public comment on the language and as a result has determined that it is appropriate. EPA has revised the standard language from that in the proposal 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. EPA believes the mandatory language for exceedances of the SMCL for fluoride is necessary to adequately communicate the cosmetic effects from dental fluorosis that may occur in children from prolonged exposure to drinking water exceeding the fluoride SMCL.

Iowa Department of Natural Resources (1.30): Why is the CCR not expressly allowed for use in this criteria, as it is in the Tier 3 violations of a similar duration?

Response: In the final rule, EPA encourages water system operators to use their CCRs to report exceedances of the SMCL for fluoride.

141.208 (c) What mandatory language must be contained in the special notice?

EPA also requests comment on whether the revised mandatory language better communicates the purpose of the notice and the cosmetic risks from drinking the water. (64 FR 25980)

Comments:

Oregon Health Division (1.20): The revised language is clear in communicating the cosmetic risk.

Response: The final rule carries forward 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. 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.

New Hampshire Department of Environmental Services (1.28): We are in favor of keeping the public notice requirements and language for fluoride as they currently are.

Response: The final rule carries forward 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. 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.

Iowa Department of Natural Resources (1.30): The IDNR fully supports the use of this language to inform parents and caregivers of children under the age of nine of the effect of elevated fluoride levels on those children. However, this language should also be added - in its entirety - to the MCL health effects language. It does a great disservice to the affected children to tell the

public that "Children may get mottled teeth." from an MCL exceedance of >4 mg/L fluoride, and yet provide this much more informative language for fluoride levels from between 2 - 4 mg/L. Use of the phrase "mottled teeth" in the MCL language is questionable, when the more descriptive "brown staining and/or pitting of the permanent teeth" is more easily understood by the general population. The IDNR fully supports the use of this SMCL health effects language for both SMCL and MCL fluoride exceedances.

Response: The final rule carries forward 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. 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. Consumers have a right to know about the cosmetic effects from dental fluorosis that may occur in children from prolonged exposure to drinking water exceeding the fluoride SMCL. EPA has included an abbreviated version of the standard language to the health effects language in Appendix B of the final rule. The health effects language contains the same main points as the mandatory language. Both the health effects language and the standard language refer to brown staining and pitting of permanent teeth.

City of Chandler (AZ), Office of the City Attorney (1.41): The notice language and other requirements mandated at 141.208(c) (as well as similar language in other areas of the proposed rule) are based on the assumption that the violation is on-going. As such the language is misleading if there is a one-time spike in a constituent level. For example, the fluoride special notice language mandates the following: "The drinking water provided by [name of community water system] has a fluoride concentration of. . ."

Thus the reader is left with the impression that water delivered by the public water system has a fluoride concentration above 2 mg/l on a continuous basis even when, as stated above, that level may have simply been a one-time fluke. I assume that the special notice level was set with the understanding that continue consumption of water with fluoride concentrations above 2 mg/l could cause cosmetic dental issues. As an aside, are there required warnings for children using fluoridated toothpaste, etc. on a daily basis?

Response: The final rule carries forward 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. 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. Consumers have a right to know about the cosmetic effects from dental fluorosis that may occur in children from prolonged exposure to drinking water exceeding the fluoride SMCL. Where fluoride violations are brief exceedances or “flukes,” systems may explain in their notice the nature of the exceedance and that the situation has been resolved and the risk abated. In response to the commenter’s question about warnings for children using fluoridated toothpaste, EPA does not issue any warnings—any such warnings would be requirements of the Food and Drug Administration. However, the revised SMCL language encourages consumers to consult their children’s dentists about the use of products containing fluoride.

University of Florida, Soil and Water Science Department (2.1): “Language for monitoring violations (including procedure violations), you must include the following language for all monitoring and testing procedure violations. . .” Must be greatly modified for low-literacy audiences. This applies also to the wording for fluoride and unregulated contaminant monitoring.

Response: The language for fluoride SMCL exceedances is mandatory. However, systems may add simplified language to the beginning or end of the notice if they wish.

Unidentified participant at Phoenix meeting (E.4): Can the standard language for exceedances of the secondary maximum contaminant level for fluoride be changed from units of mg/l to ppm or ppb, especially since this information might be included in the CCR?

Response: No, the language must be provided as written.

Topic 22: 141.209 Notice by the primacy agency on behalf of the public water system

EPA requests comment on the proposal to retain this provision. (64 FR 25980)

Comments:

Indiana DEM (1.04): It is important to leave the provision that the primacy agency (or even EPA) may provide the public notice for the system so that if a situation warrants the notice and the system refuses to provide it, there will be no legal problems involved in having the notice provided by the primacy agency.

Response: EPA agrees and has retained this requirement.

American Water Works Association (1.14): AWWA supports maintaining the existing conditions for the primacy agency giving the notification in lieu of the utility.

Response: EPA agrees and has retained this requirement.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania supports EPA's proposal to continue the provision that a primacy agency may issue PN on behalf of a PWS. This is a powerful tool to encourage suppliers to comply as a state issued PN may make it appear that the PWS is trying to hide something.

Response: EPA agrees and has retained this requirement.

Maryland Department of the Environment (1.34): Maryland supports retaining the current rule which allows the primacy agency to give notice on behalf of a system. Responsibility for the notice should remain with the public water system. This is especially important for NC systems where county agencies may draft and post notices at food facilities in response to a water quality violation.

Response: EPA agrees and has retained this requirement.

City of Chandler (AZ) Office of the City Attorney (1.41): It is unclear how the provisions of proposed Section 141.209 would be implemented. Does the primacy agency have the authority to give notice on behalf of a public water system even when the public water system has, or has stated that it will, provide such notice on its own? Is this provision intended to cover the scenario when a primacy agency and public water system disagree on the form of notice (or additional/repeat notices) to be provided? If the primacy agency takes it upon itself to provide notice notwithstanding a public water systems willingness to provide notice (or if the parties simply believe notice would be better served coming from the primacy agency), how will, and

why should, the public water system ". . . remain legally responsible for insuring that the requirements of this subpart are met."?

Response: In response to the commenter's first question, the PN rule does allow the primacy agency to deliver a notice without the consent of or over the objection of the water system; however, EPA expects that such a situation would be unusual and would be a matter to be worked out between the water system and the primacy agency. In response to the second question, this provision *does not* allow the state to give the notice when the primacy agency and the water system disagree on the form of the notice. In response to the last question, the PN obligation does not shift to the state regardless of who gives the notice. The state may fulfill the system's PN obligation by issuing the notice; however the system would still be subject to enforcement actions should the requirements not be met.

141.209 (a) When may the primacy agency give the notice on behalf of the public water system?

EPA is proposing to retain 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. (64 FR 25980)

Comments: None.

141.209 (b) What is the responsibility of the public water system when notice is given by the primacy agency?

Comments: None.

Appendix A NPDWR Violations and Situations Requiring Public Notice

EPA is also asking 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 promulgated. (64 FR 25972)

Comments:

Note: comments on violations to be included in Tier 1, Tier 2, and Tier 3 are included in Sections 141.202(a), 141.203(a), and 141.204(a), respectively.

Appendix B Standard Health Effects Language for Public Notification

EPA is requesting comment on the proposal to use the CCR standard health effects language to meet the public notification requirement. In particular, EPA is

soliciting comment on specific situations or violations where the CCR language is believed to be inappropriate or incomplete. Recommendations for alternative language for such situations would also be helpful. (64 FR 25978)

Comments:

Note: comments related to mandatory health effects language are included in Section 141.205 (d)(1).

Appendix C List of Acronyms Used in Public Notification Regulation

Comments: None.

Topic 23: Part 141, Subpart D – Reporting and record keeping

141.31 Reporting requirements

EPA requests comment on the reporting and record-keeping proposal, including the alternative to the proposal to set the retention period for records under the public notification regulations to five years. (64 FR 25980)

Comments:

Dave Van Fleet (1.03): I am in favor of option 2, no change to reporting requirements, as stated in the Preamble page 25980. Agencies would still have 10 days to report to their primacy agency. A public agency can meet the public notification requirements if it sends a copy of the public notice to the primacy agency. To require a certification statement on top of that, as option 1 states and is in §141.31, seems redundant.

Response: EPA has chosen to keep the certification requirement and reporting deadline as proposed. EPA believes that a simple self-certification of compliance by the public water system to the primacy agency (with copies of the notices) shortly after the requirements are completed saves primacy agency resources and allows better targeting of non-compliers. EPA also believes that maintaining the existing 10-day requirement gives primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance.

Indiana DEM (1.04): The reporting deadline should be extended to 10 days after the end of the month in which the public notification is required so that it is consistent with reporting requirements for other NPDWR. It does not make sense to require, if a system has an MCL violation for total coliform based on a sample collected on January 1 and repeat samples collected on January 5 to have their public notice submitted by January 15 if the samples are not even required to be submitted to the primacy agency until February 10. In addition, it would be difficult to track 10 day deadlines if they are triggered constantly for different systems.

Response: EPA has decided to keep the reporting deadline at ten days as proposed. Although sample results do not have to be submitted until ten days after the end of the month, as the commenter says, total coliform MCL violations must still be reported to the primacy agency by the end of the next business day as part of the Total Coliform Rule. EPA believes that maintaining the 10-day deadline gives primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance.

City of Anaheim, Public Utilities Department (1.05): The Department does not support EPA's proposed position on this issue. The Department contends that EPA should leave the existing reporting provision unchanged. The Department believes that the current reporting provision is adequate to keep the primacy agency fully informed that all notification requirements have been met. The additional certification process will unnecessarily divert resources from both the primacy agencies and public water systems that may be better utilized for other essential efforts.

Response: EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice, as proposed. EPA believes that maintaining the 10-day deadline is necessary to give primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance.

Washington State Department of Health, Division of Drinking Water (1.06): The requirement that PWSs submit a certification to the state (within 10 days of completion of each public notice) stating that all PN requirements have been met is redundant and unnecessary. This requirement places an additional burden on the water system to comply with the PN rule and on the state to track it for compliance purposes. The intent of revising the PN rule was to simplify the PN process so as to “encourage” compliance. This additional written requirement serves to further complicate the proposed process.

As an alternative, the water system should be required to send the state a copy of the same public notice it used to notify water system users. This notice could include a certification “box” (to be signed and dated) at the bottom of the notice that indicates the system complied with all of the PN requirements. The draft PN Handbook templates could incorporate such a certification “box” for the benefit of the PWS; thus, one notice and only one mailing to the state.

Response: EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice, as proposed. EPA believes that maintaining the 10-day deadline is necessary to give primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance. In response to the commenter’s suggestion of a certification “box,” a properly worded box that indicates the system complied with all of the PN requirements would meet the certification requirement.

Missouri Department of Natural Resources (1.13): On reporting to the primacy agency it is important that systems not only certify that the public notice requirement was met, but also to explain how the requirement was met. Why does EPA consider this unnecessary? The notice may have been posted, but was it posted in the lobby or on the back door of a broom closet? We

also instruct systems to sign the certification for honesty and accountability. . . . The existing 10-day requirement for systems to report public notice to the primacy agency should be maintained.

Response: EPA disagrees that primacy agencies would not have sufficient information to determine how the PN requirements were met. The public water system must include with its 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. Oversight by primacy agencies can be done via inspections if needed. EPA believes that the required certification method is efficient, and that requiring more would be overly burdensome.

Oregon Health Division (1.20): This “self-certification” seems overly complicated and bureaucratic. The water system should simply submit a copy of the public notice and how it was delivered to the primacy agency. . . . A submittal to the primacy agency of the public notice and method of delivery is sufficient. “Self certification” seems like a vague requirement which doesn’t contribute anything but confusion to the process. Submittal within 10 days is reasonable.

Response: EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice, as proposed. EPA believes that maintaining the 10-day deadline gives primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance. EPA disagrees that the certification requirement is complicated. A sample certification statement for PWSs to use is included in EPA’s *Public Notification Handbook*.

San Francisco Public Utilities Commission (1.22): The 10-day PNR notification requirement in Section 141.31 is inconsistent with the 60-day LCR notification requirement in Section 141.85(c)(2). Also, the 10-day PNR notification requirement is inconsistent with the 3 month CCR certification requirement.

Response: The 60-day deadline in 141.85(c)(2) for the lead and copper rule is a deadline for educating the public, not for certification or reporting to the primacy agency. EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice, as proposed. EPA believes that maintaining the 10-day deadline gives primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance.

Metro Water District (Tucson, AZ) (1.26): Please elaborate and clarify the word certification to the primacy agency. It is not clear as to how that would work and is it necessary?

Response: A certification is a statement from the owner or operator of the PWS or their designee to the primacy agency indicating that all public notification requirements have been met. A sample certification statement, included in EPA’s *Public Notification Handbook*, reads as follows: “The public water system indicated above hereby affirms that public notice has been provided to consumers in accordance with the delivery, content, and format requirements and deadlines in [regulatory citation].” Certifications will be submitted by operators to primacy agencies, along with a copy of the notice. The copy is necessary to allow the primacy agency to determine compliance with the PN requirements without the need for inspections or requesting additional information from the system. EPA believes that the certification alone without copies of the notice, as the current rule requires, does not provide the primacy agency with the information it needs to determine compliance.

New Hampshire Department of Environmental Services (1.28): We agree that it is a good procedure to align the CCR and public notice requirements. In regards to the certification process for public notice, we believe that more information should be required from the system, such as how the notice was delivered, when it was delivered, and by whom. In this way, the states can better respond to questions by consumers.

Response: EPA disagrees that primacy agencies would not have sufficient information to determine how the PN requirements were met. The public water system must include with its 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. Oversight by primacy agencies can be done via inspections if needed. EPA believes that the required certification method is efficient, and that requiring more would be overly burdensome.

Utah DEQ, Division of Drinking Water (1.31): The certification letter seems to be an unnecessary item which will be a burden and a common oversight for small water systems (systems with the most violations). . . . Utah recommends that EPA eliminate the requirement that a certification letter be submitted to the state primacy agent in conjunction with a copy of the actual public notice.

Response: EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice, as proposed. EPA believes that the certification requirement is necessary to give primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance.

Maryland Department of the Environment (1.34): Tracking submittals of certification would be difficult for current programs which verify the posting by visiting the site.

Response: EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice, as proposed. EPA believes that the certification requirement will make tracking compliance with the PN rule easier for states. Under this requirement, the PWS affirms compliance on its own. EPA believes that maintaining the 10-day deadline gives primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance.

Association of Metropolitan Water Agencies (1.35): AMWA believes that the 10 day requirement for reporting public notices to the State is unduly restrictive and provides little benefit over a more reasonable 30 day period. AMWA therefore recommends that the period be 30 days.

Response: EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice, as proposed. EPA believes that the 10-day deadline gives primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance. EPA feels that 30 days for reporting is too long for a primacy agency to wait to receive a copy of the notice if the notice is inaccurate or if consumers call with questions about the violation.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): A 10-day time period for reporting to the primacy agency is not sufficient. When weekends and holidays come into play, this may not be a realistic time frame. If the water system has been in touch with the primacy agency, then the agency will know that the requirements are being met before they receive the report. Thirty days would be more realistic to report to the primacy agency.

Response: EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice, as proposed. EPA believes that the 10-day deadline gives primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance. EPA feels that 30 days for reporting is too long for a primacy agency to wait to receive a copy of the notice if the notice is inaccurate or if consumers call with questions about the violation.

Akron (OH) Public Utilities Bureau (2.4): APUB recommends the current Sec. 141.31 be retained requiring public water systems to submit copies of all public notices to the primacy agency within 10 days of completing each public notice. It would be overly burdensome to require an additional certification that all requirements have been met. Requiring additional certification could cause additional violations where systems properly notified the public,

properly notified the primacy agency but failed to submit additional certifications to the primacy agency. Additional public notices for the same violation would confuse, not assist the public.

Response: EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice. EPA believes that the certification requirement is justified in that it gives primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance.

Unidentified participant at Madison meeting (E.1): The certification requirements are vague.

Response: A certification is a statement from the owner or operator of the PWS or their designee to the primacy agency indicating that all public notification requirements have been met. A sample certification statement, included in EPA's *Public Notification Handbook*, reads as follows: "The public water system indicated above hereby affirms that public notice has been provided to consumers in accordance with the delivery, content, and format requirements and deadlines in [regulatory citation]."

Unidentified participant at Madison meeting (E.1): The state should not have to wait ten days to receive a notice. Consumers occasionally call the state about the notice, and states should be able to refer to a copy in order to answer questions. In addition, for Tier 1 violations, systems forget to send a copy of the notice to the state if they are allowed to wait ten days. The notice should be sent to the state at the same time it is provided to consumers.

Response: EPA will require operators to submit to their primacy agency within 10 days a certification that all public notice requirements were met, along with a copy of the notice. EPA believes that the 10-day deadline gives primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance. EPA disagrees that 10 days is too long a deadline for certification. For Tier 1, the certification will not be the first contact the primacy agency has with the system. Assuming the consultation occurs before the notice is issued, the primacy agency may ask to see a copy of the notice. In addition, EPA's *Public Notification Handbook* reminds systems to send in a copy of the notice and a certification on in the instructions to each template.

Unidentified participant at Phoenix meeting (E.4): What is "certification?" Do systems need a notary public for certification?

Response: A certification is a statement from the owner or operator of the PWS or their designee to the primacy agency indicating that all public notification requirements have been met. A sample certification statement, included in EPA's

Public Notification Handbook, reads as follows: “The public water system indicated above hereby affirms that public notice has been provided to consumers in accordance with the delivery, content, and format requirements and deadlines in [regulatory citation].” The certification does not need to be notarized.

141.32 Public notification

Comments: None.

141.33 Record maintenance

EPA requests comment on the reporting and record-keeping proposal, including the alternative to the proposal to set the retention period for records under the public notification regulations to five years. EPA also requests comment on whether the record retention periods required under the related CCR regulations should be adjusted to three years, if necessary to be consistent with the final public notification retention requirements and Paperwork Reduction Act regulations. (64 FR 25980)

Comments:

Dave Van Fleet (1.03): I recommend keeping the current requirement of 3 years. I see no need to go to 5 years of retaining these records as discuss [sic] in the Preamble page 25980.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Indiana DEM (1.04): We have no preference as to how long the public notification records should be kept (3 years or 5 years), however the public notification and Consumer Confidence Report (CCR) retention schedules should be the same, so if the retention schedule is set at 3 years, the CCR retention schedule should be revised.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Des Moines Water Works (1.07): DMWW believes that retaining public notification records for three years is a reasonable retention period. Other record retention regulations require a public water system to maintain records for three years. To provide consistency, DMWW suggests that

all record retention requirements be three years. Maintaining consistent record retention periods will decrease confusion about what records need to be kept and how long to keep them.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Missouri Department of Natural Resources (1.13): The 3-year record retention requirement proposed for public notification records is probably adequate.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

American Water Works Association (1.14): AWWA supports the proposed record-keeping requirements of three years. Additionally, AWWA recommends that the CCR regulation be revised to match this three year record keeping requirement for consistency and to comply with Paperwork Reduction Act regulations.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Oregon Health Division (1.20): [The proposal to extend the recordkeeping period] is a logical approach to be consistent with the CCR and other regulatory requirements.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Association of State Drinking Water Administrators (1.23): ASDWA endorses the concept that record keeping requirements for public notification and CCRs should be compatible. However, ASDWA prefers that the records be retained for five years. This period matches the longest interval between sanitary surveys (when states would inspect a facility's records on-site). The five year period also concurs with current requirements for CCRs. As well, there has been some discussion that monitoring cycle frequency may change from three to five years.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Pennsylvania DEP, Bureau of Water Supply Management (1.25): Pennsylvania recommends requiring PWSs to retain PN records for five years. Copies of a CCR used to distribute required PN information should also be retained for five years.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Virginia Department of Health (1.29): The record retention periods for CCRs and for public notifications should be the same, whether 3 years or 5 years.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Iowa Department of Natural Resources (1.30): The public notice record maintenance period is proposed to be three years after issuance. We recommend this be changed to five years for three reasons: the longest interval between sanitary surveys is five years and that would be the time when the state would inspect the facility's on-site records; the consumer confidence report (CCR) retention period is five years; and there has been discussion of changing the monitoring frequency from a three-year cycle to a five-year cycle. For consistency with other requirements alone, a five-year retention period is recommended.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Association of Metropolitan Water Agencies (1.35): AMWA also supports retention of records for 3 years since this is the retention period for the vast majority of records and is in line with the Paperwork Reduction Act regulations. Additionally, AMWA supports adjusting the CCR rule retention requirements to three years for the same reasons. The few cases where longer retention

might make enforcement actions quicker and cheaper does not justify the added burden to the total universe of systems.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

City of Cleveland, Department of Public Utilities, Division of Water (1.39): The record retention time frame does not need to be extended from three to five years. Three years is sufficient time for water systems to keep records on hand.

Response: In the final PN rule, EPA has decided to require that PN records be retained for three years, and the CCR rule will be changed to require record retention for three years. This will make the record retention requirement in the PN rule consistent with Office of Management and Budget paperwork reduction requirements.

Topic 24: Part 142, Subpart B – Primacy requirements

Comments:

American Water Works Association (1.14): AWWA supports the proposed primacy requirements, i.e., that the primacy agencies have 2 years to adopt their own regulations. However, AWWA would advise against any early implementation requirements. The primacy agencies are swamped with new regulatory requirements, ranging from the source water assessments to implementation of the Interim Enhanced Surface Water Treatment Rule (IESWTR). Any new early implementation requirements would place an unnecessary burden on the primacy agencies.

Response: EPA has retained the two-year time frame in the final rule.

142.14 (f) Records kept by States

EPA is requesting 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. (64 FR 25981)

Comments:

Iowa Department of Natural Resources (1.30): The IDNR recommends that this be changed to a five-year minimum retention period, to coincide with other records retention requirements and the longest sanitary survey frequency, when agency records may need to be reviewed.

Response: The purpose of the recordkeeping requirements for state primacy agencies is to allow EPA access to primacy agencies' records. EPA believe that requiring records be kept for three years is adequate for this purpose. If a state wishes to retain records for a longer period for internal purposes, nothing precludes it from doing so.

Maryland Department of the Environment (1.34): Maryland prefers the current regulation for record retention which has no specific time requirement. The EPA proposal to require PWS to retain notices for 3 years should not be extended to the primacy agency. The enforcement actions reported to EPA on public notifications issued should be considered sufficient documentation of public notice preparation.

Response: In the final PN rule, EPA has set the recordkeeping requirements for states at three years to be consistent with other recordkeeping requirements under 142.14.

142.15 (a)(1) Reports by States

EPA is requesting 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. (64 FR 25981)

Comments:

Consumer Federation of America (1.11): EPA [should], (1) require states to submit to EPA information on water systems' compliance with the public notification requirements so that the information can be included in the agency's database for the drinking water program and (2) emphasize to regional and state drinking water officials that violations of the public notification requirements should be considered for enforcement actions, other than a routine letter, even when the actions would not be included in a broader enforcement action involving other program requirements.

We urge EPA to amend the rule to emphasize the responsibility of the primacy agency for enforcing compliance with the Public Notification Rule. The primacy agencies should be required to submit the compliance data to EPA. Using that data, independent audits, or both, EPA should track water system compliance and report its findings in future annual National Public Water Systems Compliance Reports.

Only when water systems are convinced by such attention to enforcement that the requirements for timely public notification are to be taken seriously will full compliance with the Public Notification rule be significantly increased.

Response: The final rule does require primacy agencies to report public notification violations to EPA (142.15(a)(1)). EPA will address compliance strategies in its guidance to primacy agencies on implementing the PN rule.

Frederick Loomis, Clean Water Action (at Allentown meeting) (E.3): The rule needs to include a requirement for tracking compliance, as recommended in the General Accounting Office (GAO) report.

Response: The final rule does require primacy agencies to report public notification violations to EPA (142.15(a)(1)). EPA will address compliance strategies in its guidance to primacy agencies on implementing the PN rule.

142.16 (a) Special primacy requirements

EPA is requesting 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 is also requesting comment on the proposed interpretation of the primacy standard to be applied for review of State alternative programs. (64 FR 25981)

Comments:

Des Moines Water Works (1.07): DMWW supports EPA's decision to allow alternative public notification requirements that are "no less stringent" than EPA requirements. This rule allows states to tailor requirements to their specific needs. However, it is important that at a minimum, state programs meet EPA guidelines to ensure consistency from state to state.

Response: EPA agrees with the comment.

Bridgeport (CT) Hydraulic Company (1.12): We agree with AWWA's strong support of the need for primary agency implementation and timing flexibility (page 25981).

Response: EPA appreciates the commenter's support and has retained this flexibility in the final rule.

Chemical Manufacturers Association (1.17): EPA should develop clear criteria that allow the primary agency to determine when Tier 1 (24-hour) notice is necessary.

Response: EPA will provide criteria in its guidance to primacy agencies on implementing the PN rule.

Oregon Health Division (1.20): This sounds way too complicated. Why is it needed?

Response: Portions of the PN rule explicitly authorize primacy agencies to augment or otherwise change the EPA requirements to build a more complete and effective State public notification program. In some cases, the regulation enables the State to be more tailored than the EPA requirements. In other cases, the regulation supports the existing flexibility under primacy for the State to be more stringent. Since the EPA regulation provides great flexibility for the States to tailor their program to fit their unique situation, 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 believes it is important to know how States are implementing this program, whether they choose to follow only the minimum requirements or to adopt portions of the rule that specifically allow the State to specify additional requirements. The Agency needs to be able to enforce State regulations, and must have a means to review State regulations to ensure that they are enforceable. EPA does not specify how States should implement their specific requirements in the federal PN rule and simply wants to ensure that whatever option the State selects is enforceable and meets the PN rule requirements.

San Francisco Public Utilities Commission (1.22): The third coordination issue is the absence of a specified approval process for primacy agencies which modify the Federal rule or adopt their own version. The two-year deadline for the primacy agency to implement the final rule will provide a reasonable timetable. However, no discussion of an approval process, comment period, or deadline to submit a draft rule to EPA was mentioned. It may be beneficial to include a recommended approval procedure and schedule in the final regulation to facilitate the implementation of this rule.

Response: The approval process is set forth in part 142.12. This would be reviewed as part of a state's primacy revision package. EPA will discuss these issues in its guidance to primacy agencies on implementing the PN rule.

Association of State Drinking Water Administrators (1.23): ASDWA questions the level of detail required by states should they wish to add to the minimum requirements. Section 142.16(a)(2)(v & vi) include the phrase "under specific circumstances defined in the State's primacy program." The phrase, however, is not included in the other items in this section. Will EPA accept a confirmation that the state has enforceable requirements and procedures or will the state be subjected to a detailed review? ASDWA maintains that once a state has met the minimum Federal requirements, no further review by EPA should be necessary.

Response: Portions of the PN rule explicitly authorize primacy agencies to augment or otherwise change the EPA requirements to build a more complete and effective State public notification program. In some cases, the regulation enables the State to be more tailored than the EPA requirements. In other cases, the regulation supports the existing flexibility under primacy for the State to be more stringent. Since the EPA regulation provides great flexibility for the States to tailor their program to fit their unique situation, 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 believes it is important to know how States are implementing this program, whether they choose to follow only the minimum requirements or to adopt portions of the rule that specifically allow the State to specify additional requirements. The Agency needs to be able to enforce State regulations, and must have a means to review State regulations to ensure that they are enforceable. EPA does not specify how States should implement their specific requirements in the federal PN rule and simply wants to ensure that whatever option the State selects is enforceable and meets the PN rule requirements.

Virginia Department of Health (1.29): How much information will EPA be requiring from the State when the State wants to add to the minimum requirements as listed in Section 142.16(a)(2)? Items (v) and (vi) of that section contain the phrase "under specific circumstances defined in the State's primacy program", which seems to be clear, but the other items do not contain such a phrase. Will EPA simply accept a confirmation that the State has enforceable requirements and procedures without subjecting the State to a detailed review of those

requirements and procedures? Once a State has met the minimum federal requirements, further review by EPA should not be necessary.

Response: Portions of the PN rule explicitly authorize primacy agencies to augment or otherwise change the EPA requirements to build a more complete and effective State public notification program. In some cases, the regulation enables the State to be more tailored than the EPA requirements. In other cases, the regulation supports the existing flexibility under primacy for the State to be more stringent. Since the EPA regulation provides great flexibility for the States to tailor their program to fit their unique situation, 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 believes it is important to know how States are implementing this program, whether they choose to follow only the minimum requirements or to adopt portions of the rule that specifically allow the State to specify additional requirements. The Agency needs to be able to enforce State regulations, and must have a means to review State regulations to ensure that they are enforceable. EPA does not specify how States should implement their specific requirements in the federal PN rule and simply wants to ensure that whatever option the State selects is enforceable and meets the PN rule requirements.

Iowa Department of Natural Resources (1.30): In section I of the preamble, it states that Section 1414(c)(2)(B) enables States to establish alternate requirements with respect to the form and content of the public notice, as long as the alternative requirement provides the same type and amount of information as is required under the EPA regulations. Are the States allowed to require more health effects information, for example, than is required under the EPA regulations, if it is deemed by the State that the public health would be better protected by requiring that information? It seems that rather than the "same" amount of information being required, it should be the "minimum" amount of information as listed in the EPA regulations is required.

Response: The final rule does allow States to modify the health effects language, provided the revised language meets the primacy requirements of being no less stringent than the federal rule.

Utah Department of Environmental Quality, Division of Drinking Water (1.31): The requirement to have states establish enforceable requirements for State specific decisions wh [sic] are more stringent than the corresponding federal rule is overly burdensome and not supportable by statute.

Utah recommends that EPA limit its primacy review to ensuring that the state has the regulatory authority to enforce rules that are as stringent as those contained in the final federal rule.

Response: Portions of the PN rule explicitly authorize primacy agencies to augment or otherwise change the EPA requirements to build a more complete and effective State public notification program. In some cases, the regulation enables

the State to be more tailored than the EPA requirements. In other cases, the regulation supports the existing flexibility under primacy for the State to be more stringent. Since the EPA regulation provides great flexibility for the States to tailor their program to fit their unique situation, 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 believes it is important to know how States are implementing this program, whether they choose to follow only the minimum requirements or to adopt portions of the rule that specifically allow the State to specify additional requirements. The Agency needs to be able to enforce State regulations, and must have a means to review State regulations to ensure that they are enforceable. EPA does not specify how States should implement their specific requirements in the federal PN rule and simply wants to ensure that whatever option the State selects is enforceable and meets the PN rule requirements.

Maryland Department of the Environment (1.34): Maryland supports that States may adopt an alternative PN program if it is "no less stringent."

Response: EPA agrees and has retained this approach in the final rule.

New York Department of Health (1.36): In Section 142.16, we believe that States should not have to establish enforceable requirements and procedures to qualify for primacy when a State opts to add or strengthen the minimum requirements under (i) through (vii), as long as the state is "at-least-as-stringent."

Response: Portions of the PN rule explicitly authorize primacy agencies to augment or otherwise change the EPA requirements to build a more complete and effective State public notification program. In some cases, the regulation enables the State to be more tailored than the EPA requirements. In other cases, the regulation supports the existing flexibility under primacy for the State to be more stringent. Since the EPA regulation provides great flexibility for the States to tailor their program to fit their unique situation, 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 believes it is important to know how States are implementing this program, whether they choose to follow only the minimum requirements or to adopt portions of the rule that specifically allow the State to specify additional requirements. The Agency needs to be able to enforce State regulations, and must have a means to review State regulations to ensure that they are enforceable. EPA does not specify how States should implement their specific requirements in the federal PN rule and simply wants to ensure that whatever option the State selects is enforceable and meets the PN rule requirements.