

would provide newly designated nonattainment areas with a one-year grace period before conformity becomes applicable, as required by a recent amendment to the Clean Air Act.

In summary, this proposed rule is required by statute and the court's interpretation of the statute, and by itself will not have substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

#### *I. Executive Order 13211*

This rule is not subject to Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### **List of Subjects in 40 CFR Part 93**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: September 28, 2001.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons set out in the preamble, 40 CFR part 93 is proposed to be amended as follows:

#### **PART 93—[AMENDED]**

1. The authority citation for part 93 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 93.102 is amended by adding paragraph (d) to read as follows:

#### **§ 93.102 Applicability.**

\* \* \* \* \*

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been designated attainment or not designated for any standard for ozone, CO, PM<sub>10</sub> or NO<sub>2</sub> since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of these pollutants, the provisions of this subpart shall not apply for 12 months following the effective date of final designation to nonattainment for each standard for such pollutant.

3. § 93.104 is amended by revising paragraph (e)(2) to read as follows:

#### **§ 93.104 Frequency of conformity determinations.**

\* \* \* \* \*

(e) \* \* \*

(2) The effective date of EPA's finding that motor vehicle emissions budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to § 93.118 and can be used for transportation conformity purposes;

\* \* \* \* \*

[FR Doc. 01–25017 Filed 10–4–01; 8:45 am]

**BILLING CODE 6560–50–P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Parts 141 and 142**

[WH–FRL–7076–2]

**RIN 2040–AB75**

#### **National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability.

**SUMMARY:** Today's action announces the availability of three reports and recommendations on the science, cost of compliance, and benefits analyses in support of a rule on arsenic in drinking water. These reports were prepared by panels convened by the National Academy of Sciences, the National Drinking Water Advisory Council, and the EPA Science Advisory Board. The establishment and operation of each of these independent, expert panels was described in a July 19, 2001, **Federal Register** proposed rule. The July 19 proposal also requested comment on whether data and analyses support setting the enforceable arsenic drinking water standard, or Maximum Contaminant Level (MCL), at 3 micrograms per liter (ug/L) (the feasible level), 5 ug/L (the level proposed in June 2000), 10 ug/L (the level published in the January 2001 rule), 20 ug/L, or some other level. The availability of these three reports allows commenters to consider this information in preparing their comments on the July 19, 2001, proposal, and to comment on the data, analyses, and conclusions that EPA should consider.

**DATES:** Comments must be in writing and either postmarked or received by EPA's Water Docket by October 31, 2001.

**ADDRESSES:** EPA accepts comments by three delivery methods:

(1) Mailed to the W–99–16–VI Arsenic Comments Clerk, Water Docket (MC–4101); U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(2) Hand delivered (e.g., courier or overnight delivery service) to EPA's Water Docket, located at 401 M Street, SW; East Tower Basement Room 57, in Washington, DC; between 9 a.m. and 3:30 p.m. Eastern Daylight Time, Monday through Friday, except holidays.

(3) Electronically sent to *ow-arsenic-docket@epa.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing and docket review.

**FOR FURTHER INFORMATION CONTACT:** The Safe Drinking Water Hotline, phone: (800) 426–4791 or (703) 412–3330, e-mail: *hotline-sdwa@epa.gov* for general information, meeting information, and copies of arsenic regulations and support documents. For other inquiries, contact Richard Reding, (202) 260–4441, e-mail: *reding.richard@epa.gov*.

#### **SUPPLEMENTARY INFORMATION:**

#### **Additional Information for Commenters**

No facsimiles (faxes), compressed or zipped files will be accepted, and comments must be submitted in writing. Please submit an original and three copies of your comments and enclosures (including references) and identify your submission by the docket number W–99–16–VI. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that comments cite, where possible, the question(s) or sections and page numbers in the document or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

EPA uses WordPerfect as its standard software, so electronic attachments (including 3.5 inch floppy disks) must be identified as docket submissions for W–99–16–VI and submitted in WordPerfect 8 (or older version) or ASCII file format (unless four hard copies are also submitted). Comments attached in other electronic formats (e.g., Word, pdf, Excel, and compressed or zipped files) must also be submitted as hard copies. If you submit your comment both electronically and as a hard copy, please note this on both submissions so the Docket can link your submissions as one comment rather than two separate comments. Electronic comments on this document may be filed online at many Federal Depository Libraries.

There is no need to submit a comment to repeat views stated in previous comments, or if you do not have

additional data relevant to these three reports. The Agency does not send out individual replies to respond to those who submit comments.

#### Availability of Docket

For an appointment to review the docket for this rulemaking, call (202) 260-3027 between 9 a.m. and 3:30 p.m. Eastern Daylight Time, Monday through Friday and refer to Docket W-99-16-VI. Every user is entitled to 100 free pages, and after that the Docket charges 15 cents a page. Users are invoiced after they copy \$25, which is 267 photocopied pages. The Safe Drinking Water Hotline can provide some hard copies of some of the supporting documentation and some electronically (phone: (800) 426-4791 or (703) 412-3330, e-mail: [hotline-sdwa@epa.gov](mailto:hotline-sdwa@epa.gov)). EPA's arsenic-in-drinking-water web page contains links to the arsenic **Federal Register** documents and other supporting material at [www.epa.gov/safewater/arsenic.html](http://www.epa.gov/safewater/arsenic.html).

#### I. Background

In the Monday, January 22, 2001, **Federal Register** (US EPA 2001a), EPA issued regulations revising the arsenic drinking water standard and clarifying compliance and new-source contaminants monitoring provisions (66 FR 6976). The Agency established a health-based, non-enforceable Maximum Contaminant Level Goal (MCLG) for arsenic of zero milligrams per liter (mg/L) in § 141.15(b) and an enforceable Maximum Contaminant Level (MCL) for arsenic of 0.01 mg/L (i.e., 10 micrograms per liter (µg/L)) for both community water systems (CWSs) and non-transient non-community water systems (NTNCWSs) in § 141.62(b)(16). (Although EPA lists drinking water standards in Title 40 of the Code of Federal Regulations (40 CFR) in units of mg/L, the Agency will refer to arsenic concentrations in µg/L in this notice.)

The Agency issued a final rule (US EPA 2001b) on May 22, 2001 (66 FR 28342), to delay the effective date of the January 2001 arsenic rule until February 22, 2002. The purpose of the delayed effective date was to allow the Agency to conduct additional reviews of the arsenic rule, including the three reviews that are the subject of today's notice, and to provide opportunities for additional public comment prior to a final decision about the MCL.

#### II. Where May I Obtain Copies of the Three Expert Panel Reports?

A. The National Academy of Sciences' (NAS) National Research Council's (NRC) Report

NAS has published the NRC the health science review report, "Arsenic in Drinking Water: 2001 Update" (NRC 2001) which is available for review or purchase on the National Academy Press web site: [www.nap.edu/catalog/10194.html](http://www.nap.edu/catalog/10194.html). The 2001 NRC report reviewed and analyzed relevant toxicological and health-effects studies published since the 1999 NRC report on arsenic as well as the analysis performed by EPA in support of the January 2001 rule.

B. National Drinking Water Advisory Council (NDWAC) Report

The NDWAC has submitted the cost review report, dated August 14, 2001, "Report of the Arsenic Cost Working Group to the National Drinking Water Advisory Council" (US EPA 2001e), at [www.epa.gov/safewater/ars/ndwac-arsenic-report.pdf](http://www.epa.gov/safewater/ars/ndwac-arsenic-report.pdf), with a cover letter to Administrator Christine Todd Whitman (US EPA 2001d, [www.epa.gov/safewater/ars/ndwac-aug2001letter.html](http://www.epa.gov/safewater/ars/ndwac-aug2001letter.html)). The NDWAC reviewed the cost of compliance estimates by EPA and other organizations for various public water systems sizes, as well as the national aggregate cost estimates associated with the January 2001 arsenic rule. The cover letter identifies the text of the Working Group Report revised by the full Council and includes an additional recommendation.

C. The Science Advisory Board (SAB) Report

The SAB and its Arsenic Rule Benefits Review Panel has submitted to Administrator Whitman the benefits review report, "Arsenic Rule Benefits Analysis: An SAB Review" (EPA 2001f). This report is available at [www.epa.gov/sab/ec01008.pdf](http://www.epa.gov/sab/ec01008.pdf). The SAB reviewed the Agency's analysis of quantified and unquantified benefits associated with the January 2001 arsenic rule.

The EPA arsenic webpage, [www.epa.gov/safewater/arsenic.html](http://www.epa.gov/safewater/arsenic.html), provides a link to each of these web addresses. Copies of the three reports may be viewed in the docket for this notice at the address and during the times noted in the Supplementary Information section of today's document.

#### III. How Will EPA Make Use of the Recommendations of the Three Expert Panels?

In the July 19 preamble (US EPA 2001d, 66 FR 37617 at 37628), EPA discussed making the findings of the expert review panels publicly available prior to the fall notice. Today's action allows the public to review the recommendations of each expert panel at the same time that the Agency is assessing the reports. Because these are final reports from independent expert panels, today's notice does not request editorial or technical changes to the reports. If you have technical comments on the analyses and conclusions of these reports that you believe EPA should consider, please submit data and your analyses to the Agency during the comment period for this document.

#### IV. References

NRC. 2001. Arsenic in Drinking Water: 2001 Update. National Academy Press, 2101 Constitution Avenue, NW, Lockbox 285, Washington, DC 20055, and at [www.nap.edu/books/0309076293/html](http://www.nap.edu/books/0309076293/html).

US EPA. 2001a. National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Final Rule. **Federal Register**. Vol. 66, No. 14, p. 6976. EPA 815-Z-01-001. January 22, 2001. Available at [www.epa.gov/safewater/arsenic.html](http://www.epa.gov/safewater/arsenic.html).

US EPA. 2001b. National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Final rule; delay of effective date. **Federal Register**. Vol. 66, No. 99, p. 28342. May 22, 2001. Available at [www.epa.gov/safewater/arsenic.html](http://www.epa.gov/safewater/arsenic.html).

US EPA. 2001c. National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring. **Federal Register**. Vol. 66, No. 139, p. 37617. July 19, 2001. Available at [www.epa.gov/safewater/arsenic.html](http://www.epa.gov/safewater/arsenic.html).

US EPA. 2001d. Letter from Janet Pawlukiewicz to the Administrator. Transmits the National Drinking Water Advisory Council Arsenic Report. August 23, 2001. Available at [www.epa.gov/safewater/arsenic.html](http://www.epa.gov/safewater/arsenic.html).

US EPA. 2001e. Final Report of the Arsenic Cost Working Group of the National Drinking Water Advisory Council. August 14, 2001. Water Resource Center (RC-4100), US EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460, and at [www.epa.gov/safewater/arsenic.html](http://www.epa.gov/safewater/arsenic.html).

US EPA. 2001f. Arsenic Rule Benefits Analysis: An SAB Review. EPA-SAB-EC-01-008. August 30, 2001. US EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001, and at [www.epa.gov/safewater/arsenic.html](http://www.epa.gov/safewater/arsenic.html).

**Authority:** 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-6, 300j-4, 300j-9, and 300j-11.

Dated: October 2, 2001.

**Diane C. Regas,**

*Acting Assistant Administrator for Water.*

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**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 281**

[FRL-7071-3]

#### **Hawaii: Tentative Approval of State Underground Storage Tank Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of tentative determination on application of State of Hawaii for final approval, public hearing and public comment period.

**SUMMARY:** The State of Hawaii has applied for approval of its underground storage tank program for petroleum and hazardous substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Hawaii application and has made the tentative decision that Hawaii's underground storage tank program for petroleum and hazardous substances satisfies all of the requirements necessary to qualify for approval. The Hawaii application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application, unless insufficient public interest is expressed.

**DATES:** A public hearing is scheduled for November 13, 2001, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by November 5, 2001. EPA will determine by November 9, 2001, whether there is sufficient interest to hold the public hearing. The State of Hawaii will participate in the public hearing held by EPA on this subject. Written comments on the Hawaii application, as well as requests to present oral testimony, must be received by the close of business on November 5, 2001.

**ADDRESSES:** Copies of the Hawaii application are available at the following addresses for inspection and copying:

U.S. EPA Region 9, Library, 13th Floor, 75 Hawthorne Street, San Francisco, California 94105, Phone: (415) 744-1510, 9 am through 4 pm,

Pacific Daylight Savings Time; U.S. EPA Region 9 Pacific Islands Contact Office (PICO), 300 Ala Moana Blvd., Room 5-152, Honolulu, HI 96850, Phone number: (808) 541-2721, 7 am through 3:30 pm, Hawaii Standard Time; Hawaii Department of Health (HDOH), Solid and Hazardous Waste Branch, 919 Ala Moana Boulevard, Room 212, Honolulu, Hawaii 96814, Phone: (808) 586-4226, 8 am through 4 pm, Hawaii Standard Time; HDOH, Environmental Management Division, 79-7595 Haukapila Street, Kealahou, HI 96750, Phone number: (808) 322-7011, 8 am through 4 pm, Hawaii Standard Time; HDOH, Environmental Health Facility, 1582 Kamehameha Avenue, Hilo, HI 96720, Phone number: (808) 933-0917, 8 am through 4 pm, Hawaii Standard Time; HDOH, Maui District Health Office, 54 High Street, Wailuku, HI 96793, Phone number: (808) 984-8230, 8 am through 4 pm, Hawaii Standard Time; HDOH, Kauai District Health Office, 3040 Umi Street, Lihue, HI 96766, Phone number: (808) 241-3323, 8 am through 4 pm, Hawaii Standard Time; or U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235 Jefferson Davis Highway, Arlington, Virginia 22202, Phone: (703) 603-9231, 9 am through 5 pm, Eastern Daylight Savings Time.

Written comments should be sent to Ms. April Katsura of the Underground Storage Tank Program Office, U.S. EPA Region 9, Mail Code WST-8, 75 Hawthorne Street, San Francisco, California 94105.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of Hawaii's application for program approval on November 13, 2001 at 6 p.m., Hawaii Standard Time, at the Kawanakoa Middle School, 49 Funchal Street, Honolulu, Hawaii 96813, Phone: (808) 587-4430. Anyone who wishes to learn whether or not the public hearing on the State's application has been canceled should telephone one of the following contacts on or before November 9, 2001:

Ms. April Katsura of the Underground Storage Tank Program Office, U.S. EPA Region 9, Mail Code WST-8, 75 Hawthorne Street, San Francisco, California 94105, Phone: (415) 744-2024; or

Mr. Steven Y.K. Chang, P.E., Manager, Solid and Hazardous Waste Branch, Hawaii Department of Health, 919 Ala Moana Boulevard, Room 212, Honolulu, Hawaii, 96814, Phone: (808) 586-4226.

**FOR FURTHER INFORMATION, CONTACT:** Ms. April Katsura of the Underground Storage Tank Program Office, U.S. EPA

Region 9, Mail Code WST-8, 75 Hawthorne Street, San Francisco, California 94105, Phone: (415) 744-2024.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Why Are State Programs Approved?**

Section 9004 of RCRA, 42 U.S.C. 6991c, authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program, subject to the authority retained by EPA in accordance with RCRA. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: (1) Is "no less stringent" than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); (2) includes the notification requirements of RCRA section 9004(a)(8); and (3) provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogues to these provisions.

##### **II. What Has EPA Tentatively Decided With Respect to Hawaii's Application for Program Approval?**

EPA has reviewed the Hawaii application, and has tentatively determined that the State's UST program for petroleum and hazardous substances meets all of the requirements necessary to qualify for final approval.

The State of Hawaii submitted its draft state program approval application to EPA by letter dated February 23, 2000. After reviewing the package, EPA submitted comments to the State for review. Hawaii submitted its complete state program approval application for EPA's tentative approval on May 23, 2001.

On January 12, 2000, Hawaii adopted UST program regulations for petroleum and hazardous substance underground storage tanks. These regulations became effective on January 28, 2000. Prior to the adoption of the regulations, Hawaii