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 [FR Doc. 02-5865 Filed 3-12-02; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL-7157-3]

Unregulated Contaminant Monitoring Regulation for Public Water Systems; Establishment of Reporting Date

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Today's direct final rule establishes August 9, 2002, as a new, later date by which large water systems serving more than 10,000 persons must report all contaminant monitoring results they receive before May 13, 2002, for the Unregulated Contaminant Monitoring Regulation (UCMR) monitoring program. Monitoring results received on or after May 13, 2002, must be reported within thirty days following the month in which laboratory results are received, as specified in the current regulation for this program.

DATES: This rule is effective May 13, 2002, without further notice, unless EPA receives adverse comment by April 11, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. EST on May 13, 2002, as provided in 40 CFR 23.7.

ADDRESSES: Please send an original and three copies of your comments and enclosures (including references) to docket number W-00-01-IV, Comment

Clerk, Water Docket (MC4101), USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Due to uncertainty of mail delivery in the Washington, DC area, in order to ensure that your comments are received, please also send a separate copy of your comments to Greg Carroll, USEPA, 26 West Martin Luther King Drive, MC-140, Cincinnati, Ohio 45268. Hand deliveries should be delivered to EPA's Water Docket at 401 M. St., SW., Room EB57, Washington, DC. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov*. Electronic comments must be submitted as a Word Perfect (WP) WP5.1, WP6.1 or WP8 file or as an ASCII file, avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W-00-01-IV. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this rule may be filed online at many Federal Depository Libraries.

The record for this rulemaking has been established under docket number W-00-01-IV and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB 57, USEPA Headquarters, 401 M St., SW., Washington, DC. For access to docket materials, please call 202/260-3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Jeffrey Bryan (202) 564-3942, Drinking

Water Protection Division, Office of Ground Water and Drinking Water (MC-4606-M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460. General information about UCMR may be obtained from the EPA Safe Drinking Water Hotline at (800) 426-4791. The Hotline operates Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. ET.

SUPPLEMENTARY INFORMATION: Potentially Regulated Entities

The regulated entities are public water systems. All large community and non-transient non-community water systems serving more than 10,000 persons are required to monitor and report under the UCMR. A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Non-transient non-community water system (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. This rule does not apply to systems serving 10,000 or fewer persons that were randomly selected to participate in the unregulated contaminant monitoring program, since EPA arranges for testing and reporting for those systems. States, Territories, and Tribes, with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples and are regulated by this action. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	NAICS
State, Territorial and Tribal Governments.	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action

to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Statutory Authority

SDWA section 1445 (a)(2), as amended in 1996, requires EPA to establish criteria for a program to monitor unregulated contaminants and to issue, by August 6, 1999, a list of

contaminants to be monitored. In fulfillment of this requirement, EPA published Revisions to the UCMR for public water systems on September 17, 1999 (66 FR 46221), March 2, 2000 (65 FR 11372), and January 11, 2001 (66 FR 2273), which included lists of contaminants for which monitoring was required or would be required in the future. On September 4, 2001 (56 FR

46221), EPA published a rule delaying requirements for reporting of unregulated contaminant monitoring results until its electronic reporting system was ready to accept data. This rule provides the new reporting deadline.

II. Background

Today's action establishes August 9, 2002, as a new, later date by which all unregulated contaminant monitoring results received before May 13, 2002, must be reported to EPA. All monitoring results received on or after May 13, 2002, must be reported within thirty days following the month in which laboratory results are received, as currently specified in 40 CFR 141.35. Today's rule to establish the reporting date will not result in a major burden or impact on any affected party. Prior dates had been established in previous rules promulgated on September 17, 1999 (64 FR 50556), and January 11, 2001 (66 FR 2273), but changed because the EPA database was not ready to receive the data. The reporting date was delayed by rule on September 4, 2001 (66 FR 46221), to allow the initial version of the database to be completed and tested before operation. The database has now been in operation since October 1, 2001, and has been receiving data from water systems. Data resulting from unregulated contaminant monitoring and sample analysis received before May 13, 2002, must be reported by August 9, 2002. The establishment of this reporting date only affects community and non-transient non-community water systems serving more than 10,000 persons which are required to monitor for unregulated contaminants and report monitoring data to EPA.

III. Costs and Benefits of the Rule

Today's amendment to the UCMR does not require any additional costs that were not already considered in previous rulemakings related to this action. The only reason that the reporting date is being established in this rule at this time is that the previously established dates could not be implemented because the EPA database was not ready to receive the data. Through the public comment on the January 11, 2001 rulemaking for this program, commenters indicated that EPA should not require reporting of unregulated contaminant monitoring results until the database was ready. That database is now ready and has been receiving such data as of October 1, 2001.

IV. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not "economically significant" under EO 12866; nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of

their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no additional enforceable duty on any State, local or Tribal governments or the private sector. This rule does not change the costs to State, local, or Tribal governments as estimated in the final revisions to the Unregulated Contaminant Monitoring Rule (64 FR 50556, September 17, 1999; 65 FR 11372, March 2, 2000; and 66 FR 2273, January 11, 2001). This rule merely establishes a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because this rule does not apply to small systems (i.e., systems serving a population of 10,000 or less), including those owned and operated by small governments. Thus today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule makes a minor revision to the Unregulated Contaminant Monitoring Rule to establish a new, later reporting deadline. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirement under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the

activities for the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. secs. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA's) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition for all three categories of small entities in the **Federal Register**, (63 FR 7620, February 13, 1998) requested public comment, consulted with SBA regarding the alternative definition as it relates to small businesses, and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule makes a minor revision to the UCMR and imposes no additional enforceable duty on any State, local or Tribal governments or the private sector. It merely establishes a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported.

F. National Technology Transfer and Advancement Act

Section 12 (d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

EPA's use of voluntary consensus standards in the UCMR program and approval of Method 515.4 were addressed in the September 1999 and January 2001 rulemakings (64 FR 50608 and 66 FR 2298). This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898—Environmental Justice Strategy

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Today's rule makes a minor change to the UCMR, and does not alter the regulatory impact of those regulations.

H. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule merely makes a minor change to the UCMR, establishing a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported. The rule imposes no cost on State and local governments, and does not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

I. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with

Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” “Policies that have Tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today’s rule merely makes a minor change to the UCMR establishing a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported. The rule imposes no cost on Tribal governments and does not pre-empt Tribal law. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as “significant energy actions.” Section 4(b) of Executive Order 13211 defines “significant energy actions” as “any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.”

This rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

K. Administrative Procedure Act

EPA is publishing this rule without prior proposal because it views this as a noncontroversial amendment and anticipates no adverse comment. EPA does not anticipate adverse comment because this rule merely establishes a new, later reporting deadline for UCMR data collected before May 13, 2002. However, in the “Proposed Rule” section of today’s **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this rule if adverse comments are filed. This rule will be effective on May 13, 2002, without further notice unless EPA receives adverse comment by April 11, 2002. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the companion proposed rule published elsewhere in today’s **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective on May 13, 2002.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indian lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 7, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.35 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 141.35 Reporting of unregulated contaminant monitoring results.

* * * * *

(c) * * * Exception: Reporting to EPA of monitoring results received by public water systems prior to May 13, 2002, must occur by August 9, 2002.

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[FR Doc. 02–6016 Filed 3–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472,