

safe drinking water under emergency circumstances including, but not limited to, earthquakes, floods, hurricanes, and other natural disasters.

(f)(1) Has adopted authority for assessing administrative penalties unless the constitution of the State prohibits the adoption of such authority. For public water systems serving a population of more than 10,000 individuals, States must have the authority to impose a penalty of at least \$1,000 per day per violation. For public water systems serving a population of 10,000 or fewer individuals, States must have penalties that are adequate to ensure compliance with the State regulations as determined by the State.

(2) As long as criteria in paragraph (f)(1) of this section are met, States may establish a maximum administrative penalty per violation that may be assessed on a public water system.

(g) An Indian Tribe shall not be required to exercise criminal enforcement jurisdiction to meet the requirements for primary enforcement responsibility.

[41 FR 2918, Jan. 20, 1976, as amended at 43 FR 5373, Feb. 8, 1978; 52 FR 20675, June 2, 1987; 52 FR 41550, Oct. 28, 1987; 53 FR 37410, Sept. 26, 1988; 54 FR 15188, Apr. 17, 1989; 54 FR 52138, Dec. 20, 1989; 63 FR 23367, Apr. 28, 1998; 63 FR 43846, Aug. 14, 1998; 63 FR 44535, Aug. 19, 1998; 65 FR 26048, May 4, 2000]

**§ 142.11 Initial determination of primary enforcement responsibility.**

(a) A State may apply to the Administrator for a determination that the State has primary enforcement responsibility for public water systems in the State pursuant to section 1413 of the Act. The application shall be as concise as possible and include a side-by-side comparison of the Federal requirements and the corresponding State authorities, including citations to the specific statutes and administrative regulations or ordinances and, wherever appropriate, judicial decisions which demonstrate adequate authority to meet the requirements of § 142.10. The following information is to be included with the State application.

(1) The text of the State's primary drinking water regulations, with references to those State regulations that vary from comparable regulations set

forth in part 141 of this chapter, and a demonstration that any different State regulation is at least as stringent as the comparable regulation contained in part 141.

(2) A description, accompanied by appropriate documentation, of the State's procedures for the enforcement of the State primary drinking water regulations. The submission shall include:

(i) A brief description of the State's program to maintain a current inventory of public water systems.

(ii) A brief description of the State's program for conducting sanitary surveys, including an explanation of the priorities given to various classes of public water systems.

(iii) A brief description of the State's laboratory approval or certification program, including the name(s) of the responsible State laboratory officer(s) certified by the Administrator.

(iv) Identification of laboratory facilities, available to the State, certified or approved by the Administrator and capable of performing analytical measurements of all contaminants specified in the State's primary drinking water regulations.

(v) A brief description of the State's program activity to assure that the design and construction of new or substantially modified public water system facilities will be capable of compliance with the requirements of the State primary drinking water regulations.

(vi) Copies of State statutory and regulatory provisions authorizing the adoption and enforcement of State primary drinking water regulations, and a brief description of State procedures for administrative or judicial action with respect to public water systems not in compliance with such regulations.

(3) A statement that the State will make such reports and will keep such records as may be required pursuant to §§ 142.14 and 142.15.

(4) If the State permits variances or exemptions from its primary drinking water regulations, the text of the State's statutory and regulatory provisions concerning variances and exemptions.

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(5) A brief description of the State's plan for the provision of safe drinking water under emergency conditions.

NOTE: In satisfaction of this requirement, for public water supplies from groundwater sources, EPA will accept the contingency plan for providing alternate drinking water supplies that is part of a State's Wellhead Protection Program, where such program has been approved by EPA pursuant to section 1428 of the SDWA.

(6)(i) A copy of the State statutory and regulatory provisions authorizing the executive branch of the State government to impose an administrative penalty on all public water systems, and a brief description of the State's authority for administrative penalties that will ensure adequate compliance of systems serving a population of 10,000 or fewer individuals.

(ii) In instances where the State constitution prohibits the executive branch of the State government from assessing any penalty, the State shall submit a copy of the applicable part of its constitution and a statement from its Attorney General confirming this interpretation.

(7)(i) A statement by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe that certifies that the laws and regulations adopted by the State or tribal ordinances to carry out the program were duly adopted and are enforceable. State statutes and regulations cited by the State Attorney General and tribal ordinances cited by the attorney representing the Indian tribe shall be in the form of lawfully adopted State statutes and regulations or tribal ordinances at the time the certification is made and shall be fully effective by the time the program is approved by EPA. To qualify as "independent legal counsel," the attorney signing the statement required by this section shall have full authority to independently represent the State primacy agency or Indian tribe in court on all matters pertaining to the State or tribal program.

(ii) After EPA has received the documents required under paragraph (a) of this section, EPA may selectively require supplemental statements by the

State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe. Each supplemental statement shall address all issues concerning the adequacy of State authorities to meet the requirements of §142.10 that have been identified by EPA after thorough examination as unresolved by the documents submitted under paragraph (a) of this section.

(b)(1) The administrator shall act on an application submitted pursuant to §142.11 within 90 days after receiving such application, and shall promptly inform the State in writing of this action. If he denies the application, his written notification to the State shall include a statement of reasons for the denial.

(2) A final determination by the Administrator that a State has met or has not met the requirements for primary enforcement responsibility shall take effect in accordance with the public notice requirements and related procedures under §142.13.

(3) When the Administrator's determination becomes effective pursuant to §142.13, it shall continue in effect unless terminated pursuant to §142.17.

[41 FR 2918, Jan. 20, 1976, as amended at 54 FR 52138, Dec. 20, 1989; 60 FR 33661, June 28, 1995; 63 FR 23367, Apr. 28, 1998]

### § 142.12 Revision of State programs.

(a) *General requirements.* Either EPA or the primacy State may initiate actions that require the State to revise its approved State primacy program. To retain primary enforcement responsibility, States must adopt all new and revised national primary drinking water regulations promulgated in part 141 of this chapter and any other requirements specified in this part.

(1) Whenever a State revises its approved primacy program to adopt new or revised Federal regulations, the State must submit a request to the Administrator for approval of the program revision, using the procedures described in paragraphs (b), (c), and (d) of this section. The Administrator shall approve or disapprove each State request for approval of a program revision based on the requirements of the