



ENVIRONMENTAL PROTECTION AGENCY

6560-50-P

40 CFR Part 147

[EPA-HQ-OW-2017-0584; FRL-9981-56-OW]

State of Idaho Voluntary Transfer of Primacy of the Class II Underground Injection Control Program to the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a final rule to amend its Underground Injection Control (UIC) regulations to reflect the transfer of the state of Idaho's UIC program for Class II injection wells from Idaho to the EPA. Idaho submitted a formal request that the EPA transfer and directly implement the Class II UIC Program. Idaho will maintain primacy for Class I, III, IV, and V injection wells pursuant to their program approved by the EPA in 1985.

DATES: This rule is effective **[Insert date of publication in the Federal Register]**. For judicial purposes, this final rule is promulgated as of **[Insert date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. **EPA-HQ-OW-2017-0584**. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through

<http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Colin Dyroff, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-3149; fax number: (202) 564-3754; email address: dyroff.colin@epa.gov; or Evan Osborne, U.S. Environmental Protection Agency, Region 10, 1200 6th Ave., OCE-101, Seattle, Washington 98101; telephone number: (206) 553-1747; fax number: (206) 553-1762; email address: osborne.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is the EPA Taking this Action?

On August 25, 2017, the EPA received a letter from the Idaho Department of Water Resources (IDWR), formally requesting that the EPA transfer and directly implement the Class II UIC program in Idaho, pursuant to the Code of Federal Regulations (CFR) at 40 CFR 145.34(a). Class II injection wells inject fluids (1) that are brought to the surface in connection with natural gas storage, or oil or natural gas production; or (2) for the purpose of enhanced oil or natural gas recovery; or (3) for the storage of hydrocarbons, which are liquid at standard temperature and pressure. Idaho received primary implementation and enforcement authority (primacy) for Class I, II, III, IV, and V injection wells under the Safe Drinking Water Act, section 1422, on July 22, 1985. Idaho has since maintained primacy for these injection well classes.

The voluntary transfer of authority for the UIC Class II program to the EPA will allow the EPA to issue Class II permits in Idaho. The EPA will be responsible for the direct

implementation of the Class II underground injection control program in Idaho, including permitting, compliance, and enforcement responsibilities, pursuant to the SDWA and federal UIC regulations.

On November 27, 2017, the EPA published a Federal Register proposed rule (82 FR 55968), providing notice of the transfer of Idaho's UIC program for Class II injection wells from Idaho to the EPA and concurrently issuing a proposed rule to amend EPA's UIC regulations to reflect such transfer. The EPA stated that if requested, a public hearing would be held. After receiving multiple hearing requests, the EPA held the public hearing on January 8, 2018, in the city of Boise, Idaho, as detailed in the proposed rule. At the public hearing, and during the 45-day comment period, which ended on January 11, 2018, the EPA received 414 comments from 387 individual commenters. The EPA has reviewed all public testimony and comments on the proposed rule and has determined that the revisions to 40 CFR part 147 will be finalized in this rule as originally proposed.

II. Legal Authorities

A state with an approved primacy program may voluntarily transfer UIC program responsibilities to the EPA, pursuant to 40 CFR 145.34(a). The regulations require that the EPA provide notice of such transfer in the Federal Register at least 30 days before the transfer is to occur. 40 CFR 145.34(a)(3). The EPA published a Federal Register proposed rule (82 FR 55968) on November 27, 2017, containing that notice. The regulations do not provide for opportunity to comment on whether to transfer, and accordingly, the EPA did not take comment on such transfer.

EPA's regulations at 40 CFR part 147 set forth the applicable UIC programs for each of

the states. This rule makes ministerial revisions to these regulations to reflect the transfer. Specifically, the rule revises 40 CFR part 147, Subpart N, to indicate that the Class II UIC program for Idaho is to be directly implemented by the EPA and consists of the UIC program requirements of 40 CFR parts 124, 144, 146, and 148. The EPA took comment only on these revisions.

Section 553(d) of the Administrative Procedure Act, 5. U.S.C. 553(d), provides that the effective date of a substantive rule must be at least 30 days after publication of the rule in the Federal Register, except “as otherwise provided by the agency for good cause.” The EPA has determined that there is good cause for making this final rule effective immediately upon publication because the transfer of primacy back to the EPA simply returns direct implementation and enforcement authority of the UIC Program for Class II wells in Idaho to the EPA. There are currently no Class II permits in effect in Idaho and, therefore, there is no need to transfer or reissue any existing state-issued Class II UIC permits as federal Class II UIC permits. The EPA finds that this constitutes good cause under 5 U.S.C. 553(d).

III. Public Comments Received on the Proposed Rule and EPA’s Response to Comments

On November 27, 2017, the EPA issued a proposed rule (82 FR 55968) and requested public comment. The public comment period was open for 45 days and ended on January 11, 2018. The EPA received 414 comments from 387 individual commenters, including comments given at the January 8, 2018, public hearing as well as one comment submitted after the close of the public comment period. Of these comments, only a minority were identified as containing material that was determined to be within the scope of the proposed rule revision. The comments the EPA received and EPA’s responses are available in EPA’s Docket No. **EPA-HQ-OW-2017-**

0584.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements on small entities; this action withdraws a state program and therein transfers direct implementation of the Class II

UIC program to the EPA. We have therefore concluded that this action will have no net regulatory burden for any directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This rule does not impose any mandates on small entities; this action withdraws a state program and therein transfers direct implementation of the Class II UIC program to the EPA.

F. Executive Order 13132: Federalism

This action 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. This action contains no federal mandates for state and local governments and does not impose any enforceable duties on state and local governments. This action merely withdraws a state program (at the voluntary request from Idaho) and therein transfers implementation of the Class II UIC program to the EPA.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it transfers a state program.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This rule does not impose any health or safety standards; this action transfers a state program and therein transfers direct implementation of the Class II UIC program to the EPA.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes

a good cause finding. The EPA has made a good cause finding for making this final rule effective immediately upon publication, per section 553(d)(3) of the Administrative Procedure Act, 5. U.S.C. 553(d)(3), as discussed in section II, including the basis for that finding.

List of Subjects in 40 CFR Part 147

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

Dated: July 24, 2018.

Andrew R. Wheeler,
Acting Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency amends 40 CFR part 147 as follows:

**PART 147 – STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND
INJECTION CONTROL PROGRAMS**

1. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h et seq.; and 42 U.S.C. 6901 et seq.

Subpart N—Idaho

2. In §147.650 revise the section heading and the introductory text to read as follows:

§147.650 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the state of Idaho, other than those on Indian lands, is the program administered by the Idaho Department of Water Resources, approved by the EPA pursuant to section 1422 of the Safe Drinking Water Act. Notice of this approval was published in the Federal Register on June 7, 1985; the effective date of this program is July 22, 1985. This program consists of the following elements, as submitted to the EPA in Idaho's program application. Note: because the EPA subsequently transferred the Class II UIC program from the Idaho Department of Water Resources to the EPA, references to Class II in the following elements are no longer relevant or applicable for federal UIC purposes.

* * * * *

3. Revise §147.651 to read as follows:

§147.651 EPA-administered program—Class II wells and all wells on Indian lands.

(a) *Contents.* The EPA administers the UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the state of Idaho. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and the EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Idaho is June 11, 1984. The effective date of the UIC program for Class II wells on non-Indian lands in Idaho is **[Insert date of publication in the Federal Register]**.

[FR Doc. 2018-16245 Filed: 7/27/2018 8:45 am; Publication Date: 7/30/2018]