

does not clearly state whether EPA is or is not initiating withdrawal as of that date.

These changes to the language of § 142.17(a)(2) require the Administrator to initiate primacy withdrawal proceedings once the Administrator makes a formal determination that the State no longer meets the requirements for primacy. EPA emphasizes that the Agency still retains full discretion to decide whether and when to reach this formal determination. For example, as explained in the August 8, 1994, proposal there may be no reason to formally determine that a State program no longer meets the requirements for primacy if the State has missed a deadline for adopting new drinking water regulations but has been granted or is seeking an extension of that deadline under § 142.12. Similarly, there may be no reason to make this formal determination if the State is otherwise carrying out any corrective actions that EPA may have ordered that would eliminate the deficiencies in the State program. Nevertheless, EPA wishes to make clear its general policy and intention to continue to vigorously pursue the need for: corrections to State programs; and initiating primacy withdrawal whenever a State is not acting in good faith to maintain the requirements for primacy.

EPA also is making a minor change to the language of § 142.17(a)(4). As promulgated in December 1989, this provision states that after reviewing a State's submission made in response to the notice that EPA is initiating primacy withdrawal proceedings, " * * * the Administrator shall either determine that the State no longer meets [primacy] requirements * * * or that the State continues to meet those requirements * * *. Any determination that the State no longer meets the requirements * * * shall not become effective except as provided in § 142.13." EPA is modifying the language of § 142.17(a)(4) by substituting the phrase "make a final determination either" for the phrase "either determine." EPA also is substituting the phrase "Any final determination" for the phrase "Any determination." This change, which was discussed in the August 8, 1994 proposal, clarifies that the Administrator's "final determination" under § 142.17(a)(4) is distinct from the initial determination made under § 142.17(a)(2) and is preceded by an opportunity for public comment.

EPA emphasizes that these changes do not alter the primacy withdrawal process. That process consists of the following sequential steps.

1. EPA's receipt of information, either through its annual review of the State program (§ 142.17(a)(1)) or otherwise, that the State program may no longer be in compliance with the requirements for primacy.

2. EPA's formal determination, made at its discretion, that the State no longer meets the primacy requirements and notification to the State that primacy withdrawal is being initiated (§ 142.17(a)(2)).

3. The State's response to EPA's notice (§ 142.17(a)(3)).

4. Final EPA determination that the State meets or does not meet the primacy requirements and notification to the State, including a notice to the public and opportunity for a hearing when the EPA's final determination is that the State does not meet primacy requirements. (§ 142.17(a)(4)).

Finally, EPA is replacing the references to "§ 142.10" contained in §§ 142.17(a)(1), 142.17(a)(2), and 142.17(a)(4) with references to "40 CFR part 142, subpart B." Section 142.10 no longer contains all of the requirements a State must meet to obtain/retain primacy. Section 142.10 contains the basic requirements, however, other portions of 40 CFR part 142, subpart B, contain additional primacy requirements associated with individual drinking water regulations. EPA is therefore revising the language of § 142.17(a) to clarify that States are expected to meet all primacy requirements contained in 40 CFR part 142, subpart B.

2. Other Technical Amendments

EPA is today also making two technical clarifying amendments to the language of §§ 142.11(b)(1) and 142.13(a). First, EPA is replacing the word "determination" whenever it occurs in § 142.13(a) with the words "final determination" to clarify that the public notice and opportunity for public hearing requirements specified in § 142.13 occur after the Administrator has made a final determination on a State's or Tribe's primacy application under § 142.11, program revision application under § 142.12, or to withdraw primacy under § 142.17. Second, in order to clarify the Agency's intent that there be an opportunity for public notice and comment on a State's or Tribe's initial primacy application, regardless of whether the Administrator's final determination is to approve or disapprove that application, EPA is revising § 142.11(b)(2) as follows: (1) insert the word "final" before the word "determination"; replace the words "has met the requirements" with the words "has met or has not met the

requirements"; and insert the words "the public notice requirements and related procedures under" before the word "§ 142.13." This change is simply a clarification since § 142.13(a) already requires an opportunity for a public hearing in either case.

Because these changes to section § 142.11(b)(2) and § 142.13(a) are simply minor clarifications and are non-substantive, good cause exists for finding that an additional notice and comment period is unnecessary (see § 553 of the Administrative Procedures Act). Moreover, these changes are logical outgrowths of the proposal, which made it clear that through this rulemaking, EPA is distinguishing between its final determinations and the earlier formal determinations that require initiation of primacy withdrawal. Therefore, an additional comment period is unnecessary in any event.

D. Impact of These Revisions

1. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to 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 on 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 and is therefore not subject to OMB review.

2. Regulatory Flexibility Act

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely revises existing procedural