COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF HEALTH
OFFICE OF THE SECRETARY

Commonwealth of Puerto Rico
Department of Health

July 10, 2003

Ms. Jane Kenny
Regional Administrator
US EPA Region 2
290 Broadway
New York, New York 1007-1866

Re: PRDOH Public Notification Primacy Revision Application Package

Dear Ms. Kenny:

Enclose herewith the Puerto Rico Department of Health (PRDOH) Primacy Revision Application Package for approval of program revision to adopt new or revised EPA regulations pursuant Section 1413 of the Safe Drinking Water Act Amendments and 40 CFR Part 142, Subpart B.

This package covers the Public Notification (PN) Rule. The PRDOH needs full implementation and enforcement authority of this Rule to proceed with actions regarding the public notification provisions as established in the regulations.

To this effect, this Department requests approval of the complete and final revised Program as soon as possible. The Attorney General statement submitted certifies that the laws and regulations adopted were duly adopted and are enforceable.

If you have any questions, please do not hesitate to contact Ms. Olga I. Rivera, Public Water Supply Supervision Program Director or me at (787) 777-0150.

Cordially,

Johnny Rullán, MD, FACPM
Secretary of Health

Enclosure: PN Primacy Application Package

Cc: Bruce Kiselica, EPA-NY, Michael Lowy, EPA-NY, Carl Soderberg, EPA-CEPD
Alfredo Casta, PRDOH, Olga I. Rivera, PRDOH

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COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF HEALTH
PUBLIC WATER SUPPLY SUPERVISION PROGRAM

Public Notification (PN) Rule Primacy Revision Application Package

July 2003

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PN PRIMACY REVISION CHECKLIST

Section I. State Primacy Revision Checklist

State Primacy Revision Checklist			
Required Program Elements		**Revision to State Program (Yes or No)**	**EPA Findings/Comments**
§142.10	Primary Enforcement	Not Revised	
§142.10(a)	Regulations No Less Stringent	"	
§142.10(b)(1)	Maintain Inventory	"	
§142.10(b)(2)	Sanitary Survey Program	"	
§142.10(b)(3)	Laboratory Certification Program	"	
§142.10(b)(4)	Laboratory Capability	"	
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§142.10(b)(6)(i)	Authority to Apply Regulations	Not Revised	
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§142.10(b)(6)(iii)	Right of Entry	"	
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§142.10(b)(6)(vi)	Authority to Assess Civil and Criminal Penalties	Not Revised	
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Section

II

TEXT OF THE STATE REGULATION

CRESPO & RODRIGUEZ, INC.

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Piedras, Puerto Rico 00927

TAQUIGRAFOS DE RECORD

Tel. (787) 758-5930 / 763-8018
Fax (787) 767-8217

CERTIFICATE OF TRANSLATOR

I certify that the foregoing is a true and exact translation of the Spanish version of Article Number II - Drinking Water of the Drinking Water Section of the General Bylaws of Environmental Health, provided to Crespo & Rodríguez, Inc.

Witness my hand this 12th day of June, 2002, in San Juan, Puerto Rico.

Crespo & Rodríguez, Inc.

Luis A. Ruiz Javier
Translator

ARTICLE II: DRINKING WATER

Section 1.00_ PUBLIC SYSTEMS OF DRINKING WATER

1.01 Requisites on Primary Standards.

1. All existing water systems and all those which will be established after the date of approval of these Regulations should comply with the requisites on primary contaminants.

2. The drinking water primary standards in Puerto Rico should be regulated in accordance with Title 40, Part 141 of the Federal Code Regulations, as amended.

1.02 Implementation of the Regulations on Primary Standards.

1. The implementations of the standards on drinking water primary contaminants in Puerto Rico will be subject to Title 40, Part 142 of the CFR, as amended.

1.03 Requisites on Secondary Standards.

1. The drinking water secondary contaminants will be regulated in accordance with Title 40, Part 143 of the CFR, as amended.

1.04 Revolving Fund.

1. Prior to commencement of operation, the Secretary is authorized to require that the drinking water systems, existing systems or new systems commencing to operate on or after October 1, 1999, be these comunal or noncomunal nontransient, to comply with Sections 1419 and 1420 of the Federal Safe Water Act, as amended; as well as with the provisions of Title 40 of the Federal Code Regulations aplicable to the primacy of the Drinking Water Program of the Department; and with federal regulations of the Revolving Fund Program and its Sub-programs. The Secretary is also authorized to order

discontinuance of the operation of the drinking water systems which do not comply with these requisites.

2. The water systems to be built the Revolving Fund Program should comply with Sections 1452, 1419 and 1420 of the Federal Safe Drinking Water Act, as amended; also they should comply with the federal guides or provisions of the Federal Code Regulations, as applicable, as well as with the procedures established by the Department under said program.

1.05 Variations and Exemptions.

1. The Department may grant variations and exemptions from specified provisions in accordance with Title 40, Part 1414 of the CFR as provided by the Federal Safe Drinking Water Act of December 16, 1976, as amended.

1.06 Additional Requisites.

1. The provisions of Section 1 of this Article should in no way be construed as a limitation of the authority of the Secretary to establish additional requisites or more stringent standards to those provided on Federal Drinking Water Act of 1974, as it may be amended, and Federal Code Regulations, as may be amended, with the purpose of safeguarding public health.

Section 2.00 BOTTLED WATER

2.01 Requisites for Processing and Bottling.

1. All plants engaged in bottling water for human comsumption in Puerto Rico should comply the water processing and bottling requisites provided on Title 21, Part 129 of the Federal Code Regulations, as amended.

2.02 Specific Requisites for Bottled Water.

1. Water bottled in Puerto Rico and all imported bottled water should comply with the quality standards and specific requisites for bottled water establish in Title 21, Part 165.110 of the CFR, as amended.

2.03 Labelling of Containers for Water and Water Products.

1. Water bottled in Puerto Rico and all bottled water imported from plants located outside of Puerto Rico should comply with the provisions of Title 2, Part 101 of the CFR, as amended.

2.04 Sound Manufacturing Practices.

1. The provisions for sound manufacturing practices contained in Title 21, Part 110 of the CFR will apply to the water bottling plants in Puerto Rico.

2.05 Bottling Plants Outside of Puerto Rico.

1. Water from all water bottling plants located outside of Puerto Rico, sold displayed, distributed, offered for sale or donation in Puerto Rico should comply with the water standards established in these Regulations.

2.06 Quality Control.

1. It will be the responsability of the operator to make sure that sample representative of the water bottled by the plant be analized by a certified laboratory, following the frequency and for the parameters specified on Title 21, Part 129, Section 129.80, Sub-part E of the CFR.

Section

III

PN PRIMACY REVISION CROSSWALK

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
SUBPART B - MAXIMUM CONTAMINANT LEVELS			
§141.11- Maximum Contaminant Levels for Inorganic Chemicals			
The non-community water system is meeting the public notification requirements under §141.209, including continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure; and....	§141.11(d)(2)	ADOPTED BY REFERENCE	
SUBPART C - MONITORING AND ANALYTICAL REPORTING REQUIREMENTS			
§141.21 - Coliform Sampling; and **§141.22 - Turbidity Sampling and Analytical Requirements**			
Amended by revising "§141.32" to read "Subpart Q" in §141.21(g)(1) and (g)(2) and §141.22(b)	§141.21(g)(1) §141.21(g)(2) §141.22(b)	ADOPTED BY REFERENCE	
§141.23 - Inorganic Chemical Sampling and Analytical Requirements			
Amended by revising "§141.32" to read "Subpart Q" in §141.23(n) and (o)	§141.23(n) §141.23(o)	ADOPTED BY REFERENCE	
Where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within 24 hours of the system's receipt of notification of the analytical results of the first sample. Systems unable to comply with the 24-hour sampling requirement must immediately notify persons served by the public water system in accordance with §141.202 and meet other Tier 1 public notification requirements under Subpart Q of this part. Systems exercising this option must take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample.	§141.23(f)(2)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
§141.24 - Organic Chemicals Other Than Total Trihalomethanes, Sampling and Analytical Requirements			
Amended by removing §141.24(f)(15)(iii) and §141.24(h)(11)(iii)	§141.24(f)(15)(iii) §141.24(h)(11)(iii)	ADOPTED BY REFERENCE	
§141.26 - Monitoring Frequency for Radioactivity in Community Water Systems; and §141.30 - Total Trihalomethanes Sampling, Analytical, and Other Requirements			
Amended by revising "§141.32" to read "Subpart Q"	§141.26(a)(4) §141.26(b)(5) §141.30(d)	ADOPTED BY REFERENCE	
SUBPART D - REPORTING AND RECORDKEEPING			
§141.31- Reporting Requirements			
The public water system, within 10 days of completing the public notification requirements under Subpart Q of this part for the initial public notice and any repeat notices, must submit to the primacy agency a certification that it has fully complied with the public notification regulations. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, and made available to persons served by the system and to the media.	§141.31(d)	ADOPTED BY REFERENCE	
§141.33 - Record Maintenance			
Copies of public notices issued pursuant to Subpart Q and certifications made to the primacy agency pursuant to §141.31 must be kept for three years after issuance.	§141.33(e)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
SUBPART G - NATIONAL REVISED PRIMARY DRINKING WATER REGULATIONS: MAXIMUM CONTAMINANT LEVELS AND MAXIMUM RESIDUAL DISINFECTANT LEVELS			
§141.63 - Maximum Contaminant Levels for Microbiological Contaminants			
Amended by revising "§141.32" to read "Subpart Q" in §141.63(b)	§141.63(b)	ADOPTED BY REFERENCE	
SUBPART H - FILTRATION AND DISINFECTION			
§141.75 - Reporting and Recordkeeping Requirements			
If at any time the turbidity exceeds 5 NTU, the system must consult with the primacy agency as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under §141.203(b)(3).	§141.75(a)(5)(ii)	ADOPTED BY REFERENCE	
If at any time the turbidity exceeds 5 NTU, the system must consult with the primacy agency as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under §141.203(b)(3).	§141.75(b)(3)(ii)	ADOPTED BY REFERENCE	
SUBPART L - DISINFECTANT RESIDUALS, DISINFECTION BYPRODUCTS, AND DISINFECTION BYPRODUCT PRECURSORS			
§141.133 - Compliance Requirements			
Amended by revising "§141.32" to read "Subpart Q" in §141.133(b)(1)(i), (b)(1(iii), (b)(2), (b)(3), and (c)(1)(i)	§141.133(b)(1)(i) §141.133(b)(1)(iii) §141.133(b)(2) §141.133(b)(3) §141.133(c)(1)(i)	ADOPTED BY REFERENCE	
Amended by revising"§141.32(a)(1)(iii)(E)" (which appears twice) to read "Subpart Q" in §141.133(c)(2)(i)	§141.133(c)(2)(i)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
Amended by revising "§141.32(e)(78)" to read "Subpart Q" in §141.133(c)(2)(ii)	§141.133(c)(2)(ii)	ADOPTED BY REFERENCE	
SUBPART O - CONSUMER CONFIDENCE REPORTS			
§141.153 - Content of the Reports			
A report that contains data on contaminants that EPA regulates using any of the following terms must include the applicable definitions: ***	§141.153(c)(3)	ADOPTED BY REFERENCE	
Maximum residual disinfectant level goal or MRDLG: The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.	§141.153(c)(3)(iii)	ADOPTED BY REFERENCE	
Maximum residual disinfectant level or MRDL: The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.	§141.153(c)(3)(iv)	ADOPTED BY REFERENCE	
Contaminants subject to an MCL, action level, maximum residual disinfectant level, or treatment technique (regulated contaminants).	§141.153(d)(1)(i)	ADOPTED BY REFERENCE	
The likely source(s) of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in Appendix A to this subpart that are most applicable to the system.	§141.153(d)(4)(ix)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques, and the report must contain a clear and readily understandable explanation of the violation including: the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language of Appendix A to this subpart.	§141.153(d)(6)	ADOPTED BY REFERENCE	
Lead and copper control requirements prescribed by Supbart I of this part. For systems that fail to take one or more actions prescribed by §§ 141.80(d), 141.81, 141.82, 141.83, or 141.84, the report must include the applicable language of Appendix A to this subpart for lead, copper, or both.	§141.153(f)(3)	ADOPTED BY REFERENCE	
Treatment techniques for acrylamide, epichlorohydrin prescribed by Subpart K of this part. For systems that violate the requirements of Subpart K of this part, the report must include the relevant language from Appendix A to this subpart.	§141.153(f)(4)	ADOPTED BY REFERENCE	
§141.154 - Required Additional Health Information			
Community water systems that detect TTHM above 0.080 mg/l, but below the MCL in §141.12, as an annual average, monitored and calculated under provisions of §141.30, must include health effects language for TTHMs prescribed by Appendix A.	§141.154(e)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
§141.155 - Report Delivery and Recordkeeping			
Any system subject to this subpart must retain copies of its Consumer Confidence Report for no less than 3 years	§141.155(h)	ADOPTED BY REFERENCE	
Appendix A to Subpart O			
Appendices A, B, and C to Subpart O (published with the final CCR Rule) contained various pieces of information about the contaminants EPA regulates. Those 3 appendices are deleted and the information is combined into a new, comprehensive Appendix A to Subpart O. The new Appendix A to Subpart O contains: - New regulatory and health effects language from the Stage 1 D/DBP rule that EPA published in December 1998. - Revised health effects language for fluoride and fecal coliform/*E. coli* MCL violations. ***Revised Appendix A to Subpart O can be found on page A-47, after the PN crosswalk.***	Appendices A, B, and C to Subpart O	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
SUBPART P - ENHANCED FILTRATION AND DISINFECTION			
§141.175 - Reporting and Recordkeeping Requirements			
If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must consult with the primacy agency as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under §141.203(b)(3).	§141.175(c)(1)	ADOPTED BY REFERENCE	
If at any time the turbidity in representative samples of filtered water exceed the maximum level set by the State under §141.173(b) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system must consult with the primacy agency as soon as practical, but no later than 24 hours after the exceedance is known, in accordance with the public notification requirements under §141.203(b)(3).	§141.175(c)(2)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
SUBPART Q - PUBLIC NOTIFICATION RULE			
§141.201- General Public Notification Requirements			
Who Must Give Public Notice? Each owner or operator of a public water system (community water systems, non-transient non-community water systems, and transient non-community water systems) must give notice for all violations of national primary drinking water regulations (NPDWR) and for other situations, as listed in Table 1 to §141.201 of the federal rule. The term NPDWR violations is used in this subpart to include violations of the maximum contaminant level (MCL), maximum residual disinfection level (MRDL), treatment technique (TT), monitoring requirements, and testing procedures in part 141. (From Table 1 to §141.201 - Violation Categories and Other Situations Requiring a Public Notice) (1) NPDWR violations (i) Failure to comply with an applicable MCL or MRDL. (ii) Failure to comply with a prescribed TT. (iii) Failure to perform water quality monitoring, as required by the drinking water regulations. (iv) Failure to comply with testing procedures as prescribed by a drinking water regulation.	**§141.201(a)**	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
(2) Variances and exemptions under §§1415 and 1416 of SDWA.			
(i) Operation under a variance or an exemption.			
(ii) Failure to comply with the requirements of any schedule that has been set under a variance or exemption.			
(3) Special public notices			
(i) Occurrence of a waterborne disease outbreak or other waterborne emergency.			
(ii) Exceedance of the nitrate MCL by non-community water systems (NCWSs), where granted permission by the primacy agency under 141.11(d) of this part.			
(iii) Exceedance of the secondary maximum contaminant level (SMCL) for fluoride.			
(iv) Availability of unregulated contaminant monitoring data.			
(v) Other violations and situations determined by the primacy agency to require a public notice under this subpart, not already listed in Appendix A.		SEE SPECIAL REQUIREMENT §142.16(a)(2)(i)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
What Type of Public Notice Is Required for Each Violation or Situation? Public notice requirements are divided into three tiers to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. The public notice requirements for each violation or situation listed in Table 1 of this section are determined by the Tier to which it is assigned. Table 2 of this section provides the definition of each Tier. Appendix A of this part identifies the tier assignment for each specific violation or situation. (From Table 2 to §141.201 - Definition of Public Notice Tiers) (1) Tier 1 public notice - required for NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure. (2) Tier 2 public notice - required for all other NPDWR violations and situations with potential to have serious adverse effects on human health. (3) Tier 3 public notice - required for all other NPDWR violations and situations not included in Tier 1 and Tier 2.	**§141.201(b)**	ADOPTED BY REFERENCE	
Who Must Be Notified? (1) Each PWS must provide public notice to persons served by the water system, in accordance with this subpart. PWSs that sell or otherwise provide drinking water to other PWSs (i.e., to	**§141.201(c)** §141.201(c)(1)	ADOPTED BY REFERENCE ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
consecutive systems) are required to give public notice to the owner or operator of the consecutive system. The consecutive system is responsible for providing public notice to the persons it serves.			
(2) If a PWS has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the primacy agency may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the primacy agency for limiting distribution must be granted in writing.	§141.201(c)(2)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(ii)	
(3) A copy of the notice must also be sent to the primacy agency, in accordance with the requirements under §141.31(d).	§141.201(c)(3)	ADOPTED BY REFERENCE	
§141.202 - Tier 1 Public Notice Requirements - Form, Manner, and Frequency of Notice			
Which Violations or Situations Require a Tier 1 Public Notice? Table 1 of this section lists the violation categories and other situations requiring a Tier 1 public notice. Appendix A to this subpart identifies the Tier assignment for each specific violation or situation. (From Table 1 to §141.202 - Violation Categories and Other Situations Requiring a Tier 1 Public Notice) (1) Violations of the MCL for total coliforms when fecal coliform or *E. coli* are present in the water distribution system	**§141.202(a)**	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
(as specified in §141.63(b)), or when the water system fails to test for fecal coliforms or *E. coli* when any repeat sample tests positive for coliform (as specified in §141.21(e));			
(2) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in §141.62, or when the water system fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in §141.23(f)(2);			
(3) Exceedance of the nitrate MCL by non-community water systems, where permitted to exceed the MCL by the primacy agency under §141.11(d), as required under §141.209;			
(4) Violation of the MRDL for chlorine dioxide, as defined in §141.65(a), when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water system does not take the required samples in the distribution system, as specified in §141.133(c)(2)(i);			
(5) Violation of the turbidity MCL under §141.13(b), where the primacy agency determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;		SEE SPECIAL REQUIREMENT §142.16(a)(2)(iii)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
(6) Violation of the Surface Water Treatment Rule (SWTR) or Interim Enhanced Surface Water Treatment Rule (IESWTR) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit (as identified in Appendix A), where the primacy agency determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;		SEE SPECIAL REQUIREMENT §142.16(a)(2)(iii)	
(7) Occurrence of a waterborne disease outbreak, as defined in §141.2, or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination);			
(8) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the primacy agency either in its regulations or on a case-by-case basis.		SEE SPECIAL REQUIREMENT §142.16(a)(2)(iii)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
When is the Tier 1 Public Notice to be Provided? What Additional Steps Are Required? PWSs must:	**§141.202(b)**	ADOPTED BY REFERENCE	
(1) Provide public notice as soon as practical but no later than 24 hours after the system learns of the violation;	§141.202(b)(1)	ADOPTED BY REFERENCE	
(2) Initiate consultation with the primacy agency as soon as practical, but no later than 24 hours after the PWS learns of the violation or situation, to determine additional public notice requirements; and	§141.202(b)(2)	ADOPTED BY REFERENCE	
(3) Comply with any additional public notification requirements (including any repeat notices or direction on the duration of posted notices) that are established as a result of the consultation with the primacy agency. Such requirements may include the timing, form, manner, frequency, and content of repeat notices (if any) and other actions designed to reach all persons served.	§141.202(b)(3)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(iv)	
What is the Form and Manner of the Public Notice? PWSs must provide the notice within 24 hours in a form and manner reasonably calculated to reach all persons served. The form and manner used by the PWS are to fit the specific situation, but must be designed to reach residential, transient, and non-transient users of the water system.	**§141.202(c)**	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
In order to reach all persons served, water systems are to use, at a minimum, one or more of the following forms of delivery:			
(1) Appropriate broadcast media (such as radio and television);	§141.202(c)(1)	ADOPTED BY REFERENCE	
(2) Posting of the notice in conspicuous locations throughout the area served by the water system;	§141.202(c)(2)	ADOPTED BY REFERENCE	
(3) Hand delivery of the notice to persons served by the water system; or	§141.202(c)(3)	ADOPTED BY REFERENCE	
(4) Another delivery method approved in writing by the primacy agency.	§141.202(c)(4)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(v)	
§141.203 - Tier 2 Public Notice Requirements - Form, Manner, and Frequency of Notice			
Which Violations or Situations Require a Tier 2 Public Notice? Table 1 of this section lists the violation categories and other situations requiring a Tier 2 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation. (From Table 1 to §141.203 - Violation Categories and Other Situations Requiring a Tier 2 Public Notice) (1) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under §141.202(a) or where the primacy agency determines that a Tier 1 notice is required; (2) Violations of the monitoring and testing procedure requirements, where the primacy agency determines that a Tier 2	**§141.203(a)**	ADOPTED BY REFERENCE SEE SPECIAL REQUIREMENT §142.16(a)(2)(vi)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; and			
(3) Failure to comply with the terms and conditions of any variance or exemption in place.			
When is the Tier 2 Public Notice to be Provided?	**§141.203(b)**	ADOPTED BY REFERENCE	
(1) PWSs must provide public notice as soon as practical, but no later than 30 days after the system learns of the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than seven days, even if the violation or situation is resolved. The primacy agency may, in appropriate circumstances, allow additional time for the initial notice of up to three months from the date the system learns of the violation. Extensions granted by the primacy agency must be in writing.	§141.203(b)(1)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(vii)	
(2) The PWS must repeat the notice every three months, as long as the violation or situation persists, unless the primacy agency determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. Primacy agency determinations allowing repeat notices to be given less frequently than once every three months must be in writing.	§141.203(b)(2)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(viii)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
(3) For the turbidity violations specified in this paragraph, PWSs must consult with the primacy agency as soon as practical but no later than 24 hours after the PWS learns of the violation, to determine whether a Tier 1 public notice under §141.202(a) is required to protect public health. When consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notice of the violation within the next 24 hours (i.e., no later than 48 hours after the system learns of the violation), following the requirements under §141.202(b) and (c). Consultation with the primacy agency is required for: (i) Violation of the turbidity MCL under §141.13(b); or (ii) Violation of the SWTR or IESWTR treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit.	§141.203(b)(3)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(ix)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
What is the Form and Manner of the Tier 2 Public Notice? PWSs must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:	**§141.203(c)**	ADOPTED BY REFERENCE	
(1) Unless directed otherwise by the primacy agency in writing, a CWS must provide notice by:	§141.203(c)(1)	ADOPTED BY REFERENCE	
(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the PWS; and	§141.203(c)(1)(i)	ADOPTED BY REFERENCE	
(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of this section. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g. house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.)	§141.203(c)(1)(ii)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(v)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide drinking water to others (e.g. apartment building owners or large private employers); posting in public places served by the system or on the Internet; or delivery to community organizations.			
(2) Unless otherwise directed by the primacy agency in writing, a NCWS must provide notice by:	§141.203(c)(2)	ADOPTED BY REFERENCE	
(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and	§141.203(c)(2)(i)	ADOPTED BY REFERENCE	
(ii) Any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in paragraph (c)(2)(i) of this section.	§141.203(c)(2)(ii)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(v)	
Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or delivery of multiple copies in central locations (e.g., community centers).			

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
§141.204 - Tier 3 Public Notice Requirements - Form, Manner, and Frequency of Notice			
Which Violations or Situations Require a Tier 3 Public Notice? Table 1 of this section list the violation categories and other situations requiring a Tier 3 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation. (From Table 1 to §141.204 - Violation Categories and Other Situations Requiring a Tier 3 Public Notice) (1) Monitoring violations under 40 CFR part 141, except where a Tier 1 notice is required under §141.202(a) or where the primacy agency determines that a Tier 2 notice is required; (1) Failure to comply with a testing procedure established in 40 CFR part 141, except where Tier 1 notice is required under §141.202(a) or where the primacy agency determines that a Tier 2 notice is required; (2) Operation under a variance granted under section 1415 or exemption granted under section 1416 of the Safe Drinking Water Act; (3) Availability of unregulated contaminant monitoring results, as required under §141.207; and (4) Exceedance of the fluoride SMCL, as required under §141.208.	**§141.204(a)**	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
When is the Tier 3 Public Notice to be Provided?	**§141.204(b)**	ADOPTED BY REFERENCE	
(1) PWSs must provide the public notice not later than one year after the PWS learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice the PWS must repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days (even if the violation or situation is resolved).	§141.204(b)(1)	ADOPTED BY REFERENCE	
(2) Instead of individual Tier 3 public notices, a PWS may use an annual report detailing all violations and situations that occurred during the previous twelve months, as long as the timing requirements of paragraph (b)(1) of this section are met.	§141.204(b)(2)	ADOPTED BY REFERENCE	
What is the Form and Manner of the Tier 3 Public Notice? PWSs must provide the initial notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:	**§141.204(c)**	ADOPTED BY REFERENCE	
(1) Unless directed otherwise by the primacy	§141.204(c)(1)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
agency in writing, community water systems must provide notice by:			
(i) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the PWS; and	§141.204(c)(1)(i)	ADOPTED BY REFERENCE	
(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of this section. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc..). Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places or on the Internet; or delivery to community organizations.	§141.204(c)(1)(ii)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(v)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
(2) Unless otherwise directed by the primacy agency in writing, a NCWS must provide notice by:	§141.204(c)(2)	ADOPTED BY REFERENCE	
(i) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and	§141.204(c)(2)(i)	ADOPTED BY REFERENCE	
(ii) Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in paragraph (c)(2)(i) of this section. Such persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).	§141.204(c)(2)(ii)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(v)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
In What Situations May the Consumer Confidence Report (CCR) Be Used to Meet the Tier 3 Public Notice Requirements? For community water systems, the CCR required under subpart O of this part may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as:	**§141.204(d)**	ADOPTED BY REFERENCE	
(1) The CCR is provided to persons served no later than 12 months after the system learns of the violation or situation as required under §141.204(b);	§141.204(d)(1)	ADOPTED BY REFERENCE	
(2) The Tier 3 notice contained in the CCR follows the content requirements under §141.205; and	§141.204(d)(2)	ADOPTED BY REFERENCE	
(3) The CCR is distributed following the delivery requirements under §141.204(c).	§141.204(d)(3)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
§141.205 - Content of the Public Notice			
What Elements Must Be Included in the Public Notice for Violations of NPDWR or Other Situations Requiring a Public Notice?	**§141.205(a)**	ADOPTED BY REFERENCE	
When a PWS violates a NPDWR or has a situation requiring public notification, each public notice must include the following elements:			
(1) A description of the violation or situation, including the contaminant(s) of concern, and (as applicable) the contaminant level(s);	§141.205(a)(1)	ADOPTED BY REFERENCE	
(2) When the violation or situation occurred;	§141.205(a)(2)	ADOPTED BY REFERENCE	
(3) Any potential adverse health effects from the violation or situation, including the standard language under paragraph (d)(1) or (d)(2) of this section, whichever is applicable;	§141.205(a)(3)	ADOPTED BY REFERENCE	
(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;	§141.205(a)(4)	ADOPTED BY REFERENCE	
(5) Whether alternative water supplies should be used;	§141.205(a)(5)	ADOPTED BY REFERENCE	
(6) What actions consumers should take, including when they should seek medical help, if known;	§141.205(a)(6)	ADOPTED BY REFERENCE	
(7) What the system is doing to correct the violation or situation;	§141.205(a)(7)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
(8) When the water system expects to return to compliance or resolve the situation;	§141.205(a)(8)	ADOPTED BY REFERENCE	
(9) The name, business address, and phone number of the water system owner, operator, or designee of the PWS as a source of additional information concerning the notice; and	§141.205(a)(9)	ADOPTED BY REFERENCE	
(10) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (d)(3) of this section, where applicable.	§141.205(a)(10)	ADOPTED BY REFERENCE	
What Elements Must Be Included in the Public Notice for PWSs Operating Under a Variance or Exemption?	**§141.205(b)**	ADOPTED BY REFERENCE	
(1) If a PWS has been granted a variance or an exemption, the public notice must contain:			
(i) An explanation of the reasons for the variance or exemption;	§141.205(b)(1)(i)	ADOPTED BY REFERENCE	
(ii) The date on which the variance or exemption was issued;	§141.205(b)(1)(ii)	ADOPTED BY REFERENCE	
(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and	§141.205(b)(1)(iii)	ADOPTED BY REFERENCE	
(iv) A notice of any opportunity for public input in the review of the variance or exemption.	§141.205(b)(1)(iv)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
(2) If a PWS violates the conditions of a variance or exemption, the public notice must contain the ten elements listed in paragraph (a) of this section.	§141.205(b)(2)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
How is the Public Notice to be Presented?	**§141.205(c)**	ADOPTED BY REFERENCE	
(1) Each public notice required by this section:			
(i) Must be displayed in a conspicuous way when printed or posted;	§141.205(c)(1)(i)	ADOPTED BY REFERENCE	
(ii) Must not contain overly technical language or very small print;	§141.205(c)(1)(ii)	ADOPTED BY REFERENCE	
(iii) Must not be formatted in a way that defeats the purpose of the notice; and	§141.205(c)(1)(iii)	ADOPTED BY REFERENCE	
(iv) Must not contain language which nullifies the purpose of the notice.	§141.205(c)(1)(iv)	ADOPTED BY REFERENCE	
(2) Each public notice required by this section must comply with multilingual requirements, as follows:	§141.205(c)(2)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(x)	
(i) For PWSs serving a large proportion of non-English speaking consumers, as determined by the primacy agency, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.	§141.205(c)(2)(i)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(x)	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
(ii) In cases where the primacy agency has not determined what constitutes a large proportion of non-English speaking consumers, the PWS must include in the public notice, the same information as in paragraph (c)(2)(i) of this section, where appropriate to reach a large proportion of non-English speaking persons served by the water system.	§141.205(c)(2)(ii)	SEE SPECIAL REQUIREMENT §142.16(a)(2)(x)	
What Standard Language Must PWSs Include in Their Public Notice?	**§141.205(d)**	ADOPTED BY REFERENCE	
PWSs are required to include the following standard language in their public notice:			
(1) Standard health effects language for MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption.	§141.205(d)(1)	ADOPTED BY REFERENCE	
PWSs must include in each public notice the health effects language specified in Appendix B to this subpart corresponding to each MCL, MRDL, and treatment technique violation listed in Appendix A to this subpart, and for each violation of a condition of a variance or exemption.			

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
(2) Standard language for monitoring and testing procedure violations. PWSs must include the following language in their notice, including the language necessary to fill in the blanks, for all monitoring and testing procedure violations listed in Appendix A to this subpart: *"We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [compliance period], we ['did not monitor or test' or 'did not complete all monitoring or testing'] for [contaminant(s)], and therefore cannot be sure of the quality of your drinking water during that time."*	§141.205(d)(2)	ADOPTED BY REFERENCE	
(3) Standard language to encourage the distribution of the public notice to all persons served. PWSs must include in their notice the following language (where applicable): *"Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail."*	§141.205(d)(3)	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** *Document title; page #; and § or ¶*	**If different than federal requirement note here and explain on separate sheet**
§141.206 - Notice to New Billing Units or New Customers			
What is the Requirement for Community Water Systems? CWSs must give a copy of the most recent public notice for any continuing violation, the existence of a variance or exemption, or other ongoing situations requiring public notice to all new billing units or new customers prior to or at the time service begins.	**§141.206(a)**	ADOPTED BY REFERENCE	
What is the Requirement for Non-Community Water Systems? NCWSs must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists.	**§141.206(b)**	ADOPTED BY REFERENCE	
§141.207- Special Notice of the Availability of Unregulated Contaminant Monitoring Results			
When is the Special Notice to be Given? The owner or operator of a community water system or non-transient, non-community water system required to monitor under §141.40 must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.	**§141.207(a)**	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
What is the Form and Manner of the Special Notice? The form and manner of the public notice must follow the requirements for a Tier 3 public notice prescribed in §§141.204(c), (d)(1), and (d)(3). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.	**§141.207(b)**	ADOPTED BY REFERENCE	
§141.208- Special Notice for Exceedance of the SMCL for Fluoride			
When is the Special Notice to be Given? CWSs that exceed the fluoride SMCL of 2 mg/l as specified in §143.3 (determined by the last single sample taken in accordance with §141.23), but do not exceed the MCL of 4 mg/l for fluoride (as specified in §141.62), must provide the public notice in paragraph (c) of this section to persons served. Public notice must be provided as soon as practical but no later than 12 months from the day the water system learns of the exceedance. A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the State public health officer. The PWS must repeat the notice at least annually for as long as the SMCL is exceeded. If the public notice is posted, the notice must remain in place for as long as the SMCL is exceeded, but in no case less than seven days (even if the exceedance is eliminated). On a case-by-case basis, the primacy agency may require an initial notice sooner than 12 months and repeat notices more frequently than annually.	**§141.208(a)**	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
What is the Form and Manner of the Special Notice? The form and manner of the public notice (including repeat notices) must follow the requirements for a Tier 3 public notice in §§141.204(c), (d)(1), and (d)(3).	**§141.208(b)**	ADOPTED BY REFERENCE	
What Mandatory Language Must Be Contained in the Special Notice? The notice must contain the following language, including the language necessary to fill in the blanks: *"'This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 milligrams per liter (mg/l) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system [name] has a fluoride concentration of [insert value] mg/l.*	**§141.208(c)**	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water. *Drinking water containing more than 4 mg/l of fluoride (the U.S. Environmental Protection Agency's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/l of fluoride, but we're required to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l because of this cosmetic dental problem.* *For more information, please call [name of your water system contact] of [name of community water system] at [phone number]. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-NSF-HELP."*			

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
§141.209 - Special Notice for Nitrate Exceedances Above MCL by Non-Community Water Systems (NCWS), Where Granted Permission by the Primacy Agency under §141.11(d)			
When is the Special Notice to be Given? The owner or operator of a non-community water system granted permission by the primacy agency under §141.11(d) to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under §141.202(a) and (b).	**§141.209(a)**	ADOPTED BY REFERENCE	
What is the Form and Manner of the Special Notice? Non-community water systems granted permission by the primacy agency to exceed the nitrate MCL under §141.11(d) must provide continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure, according to the requirements for Tier 1 notice delivery under §141.202(c) and the content requirements under §141.205.	**§141.209(b)**	ADOPTED BY REFERENCE	

Primacy Revision Crosswalk for the PN Rule			
FEDERAL REQUIREMENT	**FEDERAL CITATION**	**STATE CITATION** ***Document title; page #; and § or ¶***	**If different than federal requirement note here and explain on separate sheet**
§141.210 - Notice By Primacy Agency On Behalf of the Public Water System			
May the Primacy Agency Give Notice on Behalf of the PWS? The primacy agency may give the notice required by this subpart on behalf of the owner and operator of the PWS if the primacy agency complies with the requirements of this subpart.	**§141.210(a)**	ADOPTED BY REFERENCE	
What is the Responsibility of the PWS When Notice is Given by the Primacy Agency? The owner or operator of the PWS remains responsible for ensuring that the requirements of this subpart are met.	**§141.210(b)**	ADOPTED BY REFERENCE	

Section

IV

STATE REPORTING AND RECORD KEEPING CHECKLIST

Section IV. State Reporting and Recordkeeping Checklist

State Reporting and Recordkeeping Checklist	
Requirement	**Are State Policies Consistent with Federal Requirements? If Not, Explain**
§142.14(f) - Records Kept by States	
Public notification records under Subpart Q of Part 141 received from public water systems (including the certifications and copies of the public notice) and any State determinations establishing alternative public notification requirements for the water systems must be retained for three years.	ADOPTED BY REFERENCE
§142.15(a)(1)	
New violations by public water systems in the State during the previous quarter of State regulations adopted to incorporate the requirements of national primary drinking water regulations, including violations of the public notification requirements under Subpart Q of Part 141.	ADOPTED BY REFERENCE

Section

V

PN ADDRESSED SPECIAL PRIMACY REQUIREMENTS

Commonwealth of Puerto Rico
Department of Health

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF HEALTH
HEALTH PROTECTION SECRETARIAT
ENVIRONMENTAL HEALTH PROGRAM
PUBLIC WATER SUPPLY SUPERVISION DIVISION

Public Notification Rule § 142.16 Special Primacy Requirements

The following table contains the PRDOH Action/Compliance with the special primacy requirements of 40 CFR 142.16 for the implementation of the Public Notification (PN) Rule. These requirements are addressed in the same order that they occur in the rule.

Federal Requirement	Federal Citation	PRDOH Action/Compliance
Requiring public notice for violations or situations other than those listed in Appendix A of the PN Rule [141.201(a) (Table 1, Item 3v)]	§142.16(a)(2)(i)	PRDOH may require public water systems to give a public notice for situations other that those listed in Appendix A. Circumstances include but are not limited to the following: • Source, filtration plant and/or distribution system contamination by accident or vandalism such as spills or introduction of contaminants • Natural events and/or disasters such as heavy rains, storm, hurricanes, drought, etc. • System closing for preventive maintenance • Others, as PRDOH determines the potential serious adverse health effects from short-term-exposure.
Limited distribution for public notice to persons served by the portion of the distribution system that is out of compliance [141.201 (c)(2)]	§142.16(a)(2)(ii)	PRDOH will not adopt this provision. To this extent, public water systems must distribute public notice to persons served by the entire system.
Which violations or situations require a Tier 1 public notice [141.202(a) (Items 5, 6, and 8 of Table 1)]: 1) Violation of the turbidity MCL, under §141.13(b), where the State	§142.16(a)(2)(iii)	PRDOH may require a Tier 1 public notice for the following violations or situations: 1) Item 5: Requires an automatic Tier 2 notice and consultation with PRDOH within 24 hours.

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF HEALTH
HEALTH PROTECTION SECRETARIAT
ENVIRONMENTAL HEALTH PROGRAM
PUBLIC WATER SUPPLY SUPERVISION DIVISION

Public Notification Rule § 142.15 Special Primacy Requirements

The following table contains the PRDOH Activity Compliance with the special primacy requirements of 40 CFR 142.15 for the implementation of the Public Notification (PN) Rule. These requirements are addressed in the same order that they occur in the rule.

Federal Requirement	Federal Citation	PRDOH Adequate Authority
Requiring public notice for violations or situations other than those listed in Appendix A of the PN Rule [141.201(a)] (Table 1, Item 3)?	§142.15(a)(2)(i)	PRDOH may require public water systems to issue a public notice for situations other than those listed in Appendix A. Situations include but are not limited to the following: • Source, treatment point and/or distribution system contamination by accident or vandalism such as spills or introduction of contaminants; • Natural events and/or disasters such as heavy rains, storm, hurricanes, drought, etc. • System closing for preventive maintenance • Others, as PRDOH determines the potential to cause adverse health effects from short-term exposure.
Limited distribution for public notice to persons served by the portion of the distribution system that is out of compliance [141.201 (c)(2)]?	§142.15(a)(2)(ii)	PRDOH will not accept this provision. To this extent, public water systems must distribute public notice to persons served by the entire system.
Which violations or situations require a Tier 1 public notice [141.202(a) (Items 3, 6, and 8 of Table 1)]: i) Violation of the turbidity MCL under §141.13(b), where the State	§142.15(a)(2)(iii)	PRDOH may require a Tier 1 public notice for the following violations or situations: i) Item 3: Requires an acute notice. Tier 2 notice and consultation with PRDOH within 24 hours.

Federal Requirement	Federal Citation	PRDOH Action/Compliance
determines after consultation whether a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation [141.202(a) (Item 5 of Table 1)]. 2) Violation of the SWTR or treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit (as identified in Appendix A) [141.202(a) (Items 6 of Table 1)]. 3) Other violations or situations with significant potential to have serious adverse effects on human health as a result of a short-term exposure [141.202(a) (Items 8 of Table 1)].		PRDOH will determine on case-by-case basis if the system should issue a Tier 1 notice. Automatic Tier 1 notice is required where consultation does not take place within 24 hours after the system learns of the violation. 2) Item 6: Requires an automatic Tier 2 notice and consultation with PRDOH within 24 hours. PRDOH will determine on case-by-case basis if the system should issue a Tier 1 notice. Automatic Tier 1 notice is required where consultation does not take place within 24 hours after the system learns of the violation. 3) Item 8: Other violations or situations with significant potential to cause serious adverse health effects as a result of short-term exposure will be elevated to Tier 1 status.
Requiring additional public notice for Tier 1 violations [141.202(b)(3)]	§142.16(a)(2)(iv)	PRDOH may require additional notice in situations were: 1) there was inadequate, insufficient or inappropriate delivery of the initial notice, 2) new information becomes available, 3) special populations need to be informed such as hospitals, schools, day-care facilities and/or other healthcare professionals, 4) the system returned to compliance, 5) timing, manner, frequency, place and content of repeat notices to ensure effective, enforceable follow-up to the initial Tier 1 notice.
Different form, manner, and delivery for Tier 1, 2, and 3 public notices [141.202(c), 141.203(c), & 141.204(c)]	§142.16(a)(2)(v)	PRDOH recognizes the need to include the newspaper as an additional delivery method reasonably calculated for Tier 1, 2, and 3 to reach all persons served by the system. This method is not already listed in the PN Rule.

	Federal Requirement	Federal Citation
	determines whether consultation with a Tier 1 facility is required or whether a Tier 2 consultation is required, or has taken place within 24 hours after the system learns of the violation [141.202(a) (Item 5 of Table 1)] 2) Violations of the SWTR or treatment technique requirements resulting from a single exceedance of the maximum allowable turbidity limit (as identified in Appendix A) [141.202(a) (Item 6 of Table 1)]. 3) Other violations or situations with significant potential to have serious adverse effects on human health as a result of a short-term exposure [141.202(a) (Items 8 of Table 1)].	
	Requiring additional public notice for Tier 1 violations [141.202(b)(3)]	141.201(a)(3)(iv)
	Different form, manner and delivery for Tier 1, 2, and 3 public notices [141.201(a), 141.202(a), & 141.204(a)]	141.201(a)(3)(v)

	PRDOH Authority/Compliance	
	PRDOH will determine on a case-by-case basis if the system should issue a Tier 1 notice. Automatic Tier 1 notice is required when the violation does not take place within 24 hours after the system learns of the violation. 2) Item 5: Requires an automatic Tier 1 public consultation with PRDOH within 24 hours. PRDOH will determine on a case-by-case basis if the system should issue a Tier 1 notice. A Tier 1 notice is required if a consultation does not take place within 24 hours after the system learns of the violation. 3) Item 8: Other violations or situations with significant potential to cause serious adverse effects on human health as a result of short-term exposure will be elevated to Tier 1 items.	
	PRDOH may require additional notice in situations where: 1) there was inadequate, insufficient or inappropriate delivery of the initial notice, 2) new information becomes available, 3) special populations need to be informed such as hospitals, schools, day care facilities and/or other healthcare professionals, 4) the system returned to compliance, 5) timing, manner, frequency, place and content of repeat notices to ensure effective, reasonable follow up to the initial Tier 1 notice.	141.201(a)(3)(iv)
	PRDOH recognizes the need to include the newspaper as an additional delivery method reasonably calculated for Tier 1, 2, and 3 notices on persons served by the system. This method is not already listed in the PN Rule.	141.201(a)(3)(v)

Federal Requirement	Federal Citation	PRDOH Action/Compliance
Requiring Tier 2 public notice (rather than Tier 3 notice) for specific monitoring or testing procedure violations [141.203(a)]	§142.16(a)(2)(vi)	PRDOH will require a Tier 2 notice rather than Tier 3 notice for the following MR violations (case-by-case basis): • Turbidity • Free chlorine • Continuous monitoring (turbidity and chlorine) • Treatment technique (unfiltered systems)
Extending the initial Tier 2 public notice distribution deadline [141.203(b)(1)]	§142.16(a)(2)(vii)	PRDOH will not adopt this provision.
Extending the Tier 2 notice repeat frequency [141.203(b)(2)]	§142.16(a)(2)(viii)	PRDOH will not adopt this provision.
Requiring a Tier 1 public notice (rather than Tier 2 notice) for a turbidity MCL violation under §141.13(b) or a SWTR/IESWTR TT violation due to a single exceedance of the maximum allowable turbidity limit [141.203(b)(3)]	§142.16(a)(2)(ix)	PRDOH already have emergency phone numbers for systems to use 24-hours.
Multilingual notice requirement [141.205(c)]	§142.16(a)(2)(x)	PRDOH will not adopt this provision.

Requirement	**Federal Citation**	**PRDOH Adoption/Compliance**
Requiring the 2 public notice rather than Tier 1 notice for one monitoring or testing violation [141.203(a)]	§142.16(a)(2)(v)	PRDOH will not adopt this provision.
Extending the initial Tier 2 public notice distribution deadline [141.203(b)(2)]	§142.16(a)(2)(vi)	PRDOH will not adopt this provision.
Extending the Tier 2 notice repeat frequency [141.203(b)(2)]	§142.16(a)(2)(vii)	PRDOH will not adopt this provision.
Requiring a Tier 1 public notice (rather than Tier 2 notice) for a turbidity MCL violation under §141.13(a) or a SWTR/IESWTR TT violation due to a single exceedance of the maximum allowable turbidity limit [141.203(a)(3)]	§142.16(a)(2)(x)	PRDOH already have emergency phone number system in use 24-hours.
Multiple Tier 1 notice requirement [141.202(a)]	§142.16(a)(2)(xi)	PRDOH will not adopt this provision.

Section

VI

ATTORNEY GENERAL'S STATEMENT OF ENFORCEABILITY

The Attorney General
San Juan, Puerto Rico

August 21, 2000

Ms. Jeanne M. Fox
Regional Administrator
Environmental Protection Agency
Region II
290 Broadway
New York, New York 10007-1866

Re: Puerto Rico's Primacy Revision Application-Safe Drinking Water

Dear Ms. Fox:

According to the requirements established in Title 40 of the Code of Federal Regulation ("CFR"), §142.12, the Puerto Rico Department of Health ("PRDOH") has to obtain approval of program revisions undertaken to adopt the National Primacy Safe Drinking Water Regulations as promulgated in 40 CFR Part 141 (the "NPSDWR") in order to demonstrate its primary enforcement responsibility ("Primacy"). In its efforts to evidence its Primacy, the PRDOH has requested that we issue an opinion regarding its legal authority to adopt the amendments to the Safe Drinking Water Act ("SDWA") introduced in 1996 by Public Law 104-182 (the "SDWA Amendments"). We must also opine as to whether the PRDOH has duly incorporated the SDWA Amendments and if the adoption of said amendments has been done by adequate and enforceable means.

PRDOH's Role as Local Agency with Primacy

Puerto Rico Act No. 5 of July 21, 1977, 12 L.P.R.A. §1551, et seq., also known as the "Act to Protect the Purity of Drinking Water of Puerto Rico," (the "APPDWPR") authorized the Secretary of the PRDOH to protect the purity of the drinking water in Puerto Rico. Pursuant to the authority delegated in the APPDWPR, the Secretary of the PRDOH should issue appropriate regulations fixing the maximum contaminant levels for drinking water according to the criteria established by the Administrator of the Environmental Protection Agency. Puerto Rico Act No. 193, approved by the Puerto Rico Legislature on December 26, 1997, reasserted the PRDOH's primary responsibility for protecting the purity of drinking water and public health, in general, in this jurisdiction.

Regulation No. 50 adopted by the PRDOH on June 20, 1983, also known as "Regulation to Protect the Purity of the Drinking Water of Puerto Rico," ("Regulation 50") and its subsequent amendments were adopted to comply with the delegated power and responsibilities of the PRDOH under the APPDWPR and for the PRDOH to adequately function as the state agency with Primacy. On February 4, 2000, in an effort to update and clarify its role as the agency with

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Primacy in this jurisdiction, the PRDOH adopted Regulation No. 6090, also known as the "General Regulation of Environmental Health," ("PRDOH Regulation No. 6090") and derogated Regulation No. 50. For the sake of evidencing its unequivocal intent to comply with all SDWA requirements and with the SDWA Amendments, in particular, in Article II §1.02 of PRDOH Regulation No. 6090 the PRDOH adopted the totality of 40 CFR Part 141, as amended from time to time, by reference.

Requirements for a Showing of Primacy

We proceed to analyze the requirements established in the NPSDWR for a showing of Primacy and the local statutes and regulations that serve to grant Primacy to the PRDOH.

1. Under 40 CFR §142.10 (a), in order to establish its primary responsibility for public water systems, the PRDOH must adopt drinking water regulations no less stringent than those imposed by the NPSDWR.

   In compliance with this requirement, the PRDOH Regulation No. 6090 establishes in its Article II §1.02 that primary standards for drinking water will be fixed and regulated according to 40 CFR Part 141, as amended. Article II §1.06 (1) of PRDOH Regulation No. 6090 goes even farther than the requirement established in 40 CFR § 142.10 in as much as, in order to protect public health, it grants to the Secretary of the PRDOH the authority to impose more stringent standards on drinking water safety than those established on the SDWA and the CFR.

2. In 40 CFR § 142.10 (b)(2) it is required that the PRDOH systematically perform sanitary surveys of public water systems, prioritizing on water systems violating primary drinking water regulations.

   PRDOH Regulation No. 6090 adopted in its Article II §1.02, by reference, all requirements contained in 40 CFR Part 141, as it may be amended from time to time.

3. According to 40 CFR §142.10 (b)(6)(i), the PRDOH must have authority to apply its primary drinking water regulations to all public water systems in Puerto Rico. The PRDOH must also have statutory or regulatory enforcement authority adequate to assure compliance with locally adopted primary drinking water regulations, as necessary.

   Section 3 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the PRDOH to enforce drinking water regulations applicable to all water systems for human consumption.

   In Chapter II, Article II §1.04 of the PRDOH Regulation No. 6090, the PRDOH is authorized (a) to require that all water systems in Puerto Rico comply with NPSDWR requirements regarding safe drinking water, and (b) to immediately close any facility violating said requirements.

4. 40 CFR §142.10 (b)(6)(ii) requires that the PRDOH be able to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of the State's primary drinking water regulations.

Section 5 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to take any actions deemed necessary to protect a water system and its users' health. These actions include, but are not limited to, the commencement of a civil suit and the request of a permanent or temporary injunction.

5. Under 40 CFR §142.10 (b)(6)(iii), the PRDOH must have right of entry and inspection of public water systems, including the right to take water samples, whether or not it has evidence of violations of an applicable legal requirement.

Section 3 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to conduct inspections and perform monitoring on water systems for human consumption.

Chapter I, Article IX § 2 of the PRDOH Regulation No. 6090 authorizes the inspection by the PRDOH of any drinking water system without previous notice.

Chapter I, Article IX § 5 of the PRDOH Regulation No. 6090 authorizes the Secretary of the PRDOH to take and analyze samples on water systems or any of its components to determine water quality and purity.

6. 40 CFR §142.10 (b)(6)(iv) requires that the PRDOH require suppliers of water to keep appropriate records and make appropriate reports to the State.

Article II §1.02 of the PRDOH Regulation No. 6090 adopted the 40 CFR Part 141, as amended, by reference.

Chapter I, Article IX § 5 of the PRDOH Regulation No. 6090 authorizes the Secretary of the PRDOH to require and examine any record from facilities or systems under its jurisdiction, as deemed necessary.

7. In order to comply with the requirements of 40 CFR §142.10 (b)(6)(v), the PRDOH must be authorized to require public water systems to give public notice according to requirements established in 40 CFR §§ 141.32 and 142.16 (a), respectively.

Section 7 of the APPDWPR, 12 L.P.R.A. §1551, et seq., requires a water system that is, in any way, in noncompliance with drinking water standards to immediately notify the nature and extent of the situation and its possible adverse health effects the local health office, the Secretary of the PRDOH and the media in the area served by the system. If the Secretary of the PRDOH so requires, said notice must be published in a daily newspaper of general circulation while the violation or variance exists, and must be included in water bills issued to system users. Article II §1.02 of the PRDPH Regulation No. 6090 adopted, by reference, the 40 CFR Part 141, as amended.

8. 40 CFR §142.10 (b)(6)(vi) requires that the PRDOH have authority to assess civil or criminal penalties for violation of the local primary drinking water regulations and public notification requirements, including the authority to assess daily penalties or multiple penalties when a violation continues.

Section 9 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to impose civil penalties not greater than five thousand dollars ($5,000.00) per day per violation of the APPDWPR, of regulations adopted by the PRDOH regarding drinking water, or of any administrative order issued relating to this matter.

Chapter III of the PRDOH Regulation No. 6090 authorizes the imposition of criminal penalties not greater than five thousand dollars ($5,000.00) per day per violation of Section I of Regulation No. 6090.

Violation of public notice requirements would constitute a violation of both of the APPDWPR and PRDOH Regulation No. 6090.

9. Pursuant to the requirements in 40 CFR §142.10 (b)(6)(vii), the PRDOH must be authorized to require consumer confidence reports to all community water systems. Said reports must be prepared according to 40 CFR Part 141, subpart 0.

Article II §1.02 of the PRDOH Regulation No. 6090 adopted, by reference, 40 CFR Part 141, as amended from time to time.

10. Under 40 CFR §142.10 (d)(1), if the PRDOH allows small system variances pursuant to Section 1415(e) of the SDWA, it must provide procedures no less stringent than the SDWA and Subpart K of this part.

Section 4 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to grant variances and exemptions to drinking water regulations, provided they are authorized under conditions not less rigorous than variances or exemptions allowed under federal law.

11. As required pursuant to 40 CFR §142.10 (d)(2), if the PRDOH permits other type of variances, or exemptions, or both, from local primary drinking water regulations, it shall do so under conditions and in a manner no less stringent than the requirements of §§ 1415 and 1416 of the SDWA. In granting these variances, the State must adopt EPA Administrator's findings of best available technology, treatment techniques, or other means available as specified in Subpart G of this part.

Article II §1.02 of the PRDOH Regulation No. 6090 adopted 40 CFR Part 141, as amended, by reference, and Article II §1.05 of said regulation authorizes variances and exemptions only according to 40 CFR Part 141.4.

12. 40 CFR § 142.10(e) requires the adoption and implementation of an adequate plan for the provision of safe drinking water under emergency circumstances including, but not limited to, earthquakes, floods, hurricanes, and other natural disasters.

Section 6 of the APPDWPR, 12 L.P.R.A. §1551, et seq., directs the Secretary of the PRDOH to promulgate a plan to supply drinking water in emergency circumstances, and authorizes the Secretary of the PRDOH to take any measures deemed necessary to supply it. The plan has been adopted and is periodically revised to reflect any relevant change of

circumstances in the island or its infrastructure, and changes regarding agency officials to be contacted.

13. 40 CFR §142.10 (f)(1) requires that the PRDOH have authority for assessing administrative penalties of at least $1,000 per day, per violation, for public water systems serving a population of more than 10,000 individuals. For public water systems serving a population of 10,000 or fewer individuals the penalties to be imposed by the PRDOH must be adequate to ensure compliance with local regulations. As long as these criteria are met, the maximum administrative penalty per violation to be assessed on a public water system may be determined by the PRDOH.

    Section 9 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to impose civil penalties not greater than five thousand dollars ($5,000.00) per day, per violation of the APPDWPR, of regulations adopted by the PRDOH regarding drinking water, or of any administrative order issued relating to this matter.

    Chapter III of the PRDOH Regulation No. 6090 authorizes the imposition of criminal penalties not greater than five thousand dollars ($5,000.00) per day per violation of regulations contained on Section I of PRDOH Regulation No. 6090.

    Administrative Order No. 2000-27500 issued on August 18, 2000, by the Secretary of the PRDOH specifically requires that any penalty imposed on public water systems serving a population of more than 10,000 individuals must be of at least $1,000 per day per violation, and for public water systems serving a population of 10,000 or less individuals, penalties assessed must adequately deter future violations of applicable regulations.

14. The state agency must administer a Public Water Supply Supervision Program ("PWSS") pursuant to Section 1413 of the SDWA.

    The PRDOH administers its PWSS pursuant to Section 1413 of the SDWA and the primary enforcement authority delegated to the PRDOH by the Administrator of the EPA, through communication dated March 1, 1980.

The preceding analysis of the authorities and functions delegated to the PRDOH in the previously reviewed statutes and regulations reveals, in our opinion, that the PRDOH is fully authorized by the APPDWPR to adopt and enforce the SDWA Amendments, that the referenced amendments have been lawfully adopted by the PRDOH and are enforceable through legally adequate means.

Respectfully,

Edda Serrano Blasini
Deputy Attorney General

COMMONWEALTH OF PUERTO RICO

DEPARTMENT OF JUSTICE

PO BOX 00192, SAN JUAN, PUERTO RICO 00902-0192

ADDRESS ALL COMMUNICATIONS TO THE SECRETARY

June 5, 2002

Hon. Johnny Rullán
Secretary
Department of Health
PO Box 70184
San Juan, Puerto Rico 00936-0184

Opinion No. 227-02-A
Translated

Dear Secretary Rullán:

This letter is in response to your request for an opinion as to the legal basis upon which the Department of Health of the Commonwealth of Puerto Rico (Department) may adopt, by reference, the amendments to the regulations administered by the Environmental Protection Agency (EPA).

On March 5, 2002, the Department of Health enacted Regulation No. 6090, *General Regulation for Environmental Health* (General Regulation), pursuant to the provisions of Act No. 5 of July 21, 1977, as amended, *Act to Protect the Pureness of Drinking Water of Puerto Rico*, 12 PR Laws Ann. §§ 1551 *et seq* (Act No. 5). The General Regulation established the standards to be met with regards to the drinking water in Puerto Rico. Towards that end, it provides for the adoption, by reference, of the amendments that may be approved to sections 141 to 143 of Title 40 of the Code of Federal Regulations (CFR) and the *Safe Drinking Water Act* (SDWA) without complying with the requirements established by Act No. 170 of August 12, 1988, as amended, *Uniform Administrative Procedure Act of the*

Commonealth of Puerto Rico, 3 PR Laws Ann. §§ 2101 *et seq* (Administrative Act).

You indicate that the EPA questions the validity of adopting amendments by reference, without complying with the procedure of the Administrative Act. On August 21, 2000, then Acting Secretary of Justice, Edda Serrano Blasini, Esq., issued an opinion addressed to Mrs. Jeanne M. Fox, an oficial of the EPA, expressing that the Department had complied with the requirements established by the *National Primacy Safe Drinking Water Regulation*, as stated in section 141 of the CFR. The opinion certified that such rules were validly adopted and incorporated into Puerto Rico's legal system. However, the opinion did not state the basis in law and jurisprudence that allowed the Department to adopt federal regulations by reference. This letter intends to fulfill such omission.

Act No. 5 was approved in order to regulate compliance with the standards for the purity of the drinking water, as well as the level of tolerance of contaminants. By virtue of section 3 of Act No. 5, the Secretary of Health (Secretary) is conferred the authority to enact and enforce the rules necessary to ensure the safety of drinking water in Puerto Rico, in accordance to the criteria established by the EPA. This includes the adoption of procedures for monitoring and inspection.

The regulations issued by the Secretary under Act No. 5 are aplicable to all the systems that offer water for human consumption in Puerto Rico. Section 4 of Act No. 5 provides that the Secretary can establish variations and waivers to the approved regulations. This includes the power to adopt the conditions he deems necessary and desirable, as long as such conditions are not less strict than the ones established by the federal regulations under the SDWA.

In its provisions regarding the safety of drinking water, the General Regulation establishes that the adoption of primary and secondary contaminant standards of drinking water, as well as the operation of the water systems, are to be ruled by the aplicable federal regulations in the CFR and the SDWA, as they may be amended.

The constitutionality of the delegation of power to a public agency by the Legislative Branch is determined by the boundaries prescribed with the delegation in question. In addition, the scope of the power granted to an agency must be examined in light of the methods of control present in the statutes aplicable to the specific agency. D. Fernández, Derecho Administrativo y Ley Uniforme de Procedimientos Administrativos, Forum, 2da Ed, 2001. Therefore, the analysis regarding the validity of the power an administrative action must begin with the boundaries limiting the power and the statutory context in which they appear.

The doctrine which prescribes the proper delegation of power is jurisprudential and is based on broad and general principles. Due to the complexity of the current social and economic problems faced by modern legislation, the doctrine in this field establishes that the delegation of power to administrative agencies is more efficient when done in terms of broad and general standards. Hilton Hotels v. Junta de Salario Mínimo, 74 DPR 670, 698 (1953). See also, American Power & Light v. Security Exchange Comission, 329 US 90 (1946).

The validity of an administrative agency's power to adopt regulations must be examined in accordance to the following standard: (1) the administrative action is authorized by law; (2) the administrative agency is invested with the power to issue regulations; (3) the regulations enacted fall within the boundaries of the delegated powers; (4) the rules were enacted in compliance with the procedural norms established by the organic act, and any other applicable statute, (5) the rules are not arbitrary or capricious. M & B.S., Inc. v. Departamento de Agricultura, 118 DPR 319 (1987). Consequently, the legislative delegation can be wide and flexible, as long as the regulations issued remain in harmony with the statutory provisions under which they are enacted. Ex Parte Irizarry, 66 DPR 672 (1946). Otherwise, the regulation faces a potential risk of ilegal. Franco Dominicci v. Departamento de Educación, Opinion and Judgment of June 30, 1999, 99 JTS 108.

As stated above, Act No. 5 authorizes the Secretary to enact such regulations as he finds necessary, within the parameters for drinking water established by the EPA, as long as they are not less rigorous than the federal regulations. The General Regulation explicitly contains said statutory

limitation. The main guiding principle for the administrative action is precisely the federal rules, specificly sections 141 to 143 of the CFR. Therefore, the Regulation meets the standard mentioned above. The Secretary posseses legal power to enact those provisions as he deems necessary, without any additional requirement besides the delegation already given by the Legislative Branch.

Further, the adoption by reference of any amendment that may be enacted to the CFR and to the SDWA, implies that changes of a substantive nature will take place in the local regulation with every amendment to the federal rules. However, any intended amendment or modification to the local regulation must be done in compliance with the provisions of the Administrative Act in order to be valid.

The Administrative Act was approved with the purpose, among others, of creating a uniform body of minimum rules with which the agencies subject to said statute must comply whenever they intend to propose and adopt regulations. Said statute establishes the proceedings to be followed to implant regulations.

However, the *General Provisions* contained in the corresponding sub-chapter, 3 PR Laws Ann. § 2103, exempts the agencies from complying with the requirements of the Administrative Act whenever they determine it is necessary in order to avoid the denial of funds or sevices by the federal government of the United States of America. Said section acknowledges the discretionary power of the agencies to shape and conform their administrative procedures to those required by the aplicable federal laws, without complying neither with the provisions of the Administrative Act or the *Administrative Procedure Act*, 5 USC §§ 551 *et seq.* This waiver from said statutes is complete, except for the requirements concerning the publication of the rules.

In accordance to the aforementioned jurisprudence, it is clearly evident that the Legislative Branch has empowered the Secretary to enact and enforce the regulations he deems necessary to monitor and supervise the drinking waters in Puerto Rico, according to the standards established by the Administrator of the EPA. As part of the duties imposed by Act No. 5, the

Secretary manages the Revolving Fund for Potable Waters in Puerto Rico, which receives grants assigned by the EPA and the federal government.

In adopting the amendments by reference, is not under the obligation to hold public hearings prior to the enactment of said rules, nor comply with any other provision of the Administrative Act. However, he shall comply with the requisite of disclosure and publication established in the Administrative Act, whenever the amendments to the federal regulations substantially affect the General Regulation.

Hoping that the aspects discussed above will be helpful, I remain,

Cordially yours,

Anabelle Rodríguez
Secretary of Justice