

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 6A - PUBLIC HEALTH SERVICE
SUBCHAPTER XII - SAFETY OF PUBLIC WATER SYSTEMS
Part C - Protection of Underground Sources of Drinking Water

§ 300h. Regulations for State programs

(a) Publication of proposed regulations; promulgation; amendments; public hearings; administrative consultations

(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after December 16, 1974. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) Minimum requirements; restrictions

(1) Regulations under subsection (a) of this section for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2) of this section. Such regulations shall require that a State program, in order to be approved under section 300h-1 of this title—

(A) shall prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require

(i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and

(ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply

(i) as prescribed by section 300j-6 (b) ¹ of this title, to underground injections by Federal agencies, and

(ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

- (3) (A) The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.
- (B) (i) In prescribing regulations under this section the Administrator shall, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number of States.
- (ii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed to disrupt a State underground injection control program only if it would be infeasible to comply with both such regulation and the State underground injection control program.
- (iii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed unnecessary only if, without such regulation, underground sources of drinking water will not be endangered by an underground injection.
- (C) Nothing in this section shall be construed to alter or affect the duty to assure that underground sources of drinking water will not be endangered by any underground injection.
- (c) **Temporary permits; notice and hearing**
- (1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section) temporary permits for underground injection which may be effective until the, expiration of four years after December 16, 1974, if—
- (A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;
- (B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;
- (C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and
- (D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.
- (2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after December 16, 1974, if the State finds, on the record of such hearing—
- (A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);
- (B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and
- (C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.
- (d) **“Underground injection” defined; underground injection endangerment of drinking water sources**

For purposes of this part:

- (1) **Underground injection.**— The term “underground injection”—
- (A) means the subsurface emplacement of fluids by well injection; and
 - (B) excludes—
 - (i) the underground injection of natural gas for purposes of storage; and
 - (ii) the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.
- (2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system’s not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

Footnotes

¹ See References in Text note below.

(July 1, 1944, ch. 373, title XIV, § 1421, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1674; amended Pub. L. 95–190, § 6(b), Nov. 16, 1977, 91 Stat. 1396; Pub. L. 96–502, §§ 3, 4 (c), Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99–339, title II, § 201(a), June 19, 1986, 100 Stat. 653; Pub. L. 104–182, title V, § 501(b)(1), Aug. 6, 1996, 110 Stat. 1691; Pub. L. 109–58, title III, § 322, Aug. 8, 2005, 119 Stat. 694.)

References in Text

Section 300j–6 (b) of this title, referred to in subsec. (b)(1)(D), was repealed, and a new section 300j–6 (b) relating to administrative penalty orders was added, by Pub. L. 104–182, title I, § 129(a), Aug. 6, 1996, 110 Stat. 1660.

Amendments

2005—Subsec. (d)(1). Pub. L. 109–58 inserted heading and amended text of par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘underground injection’ means the subsurface emplacement of fluids by well injection. Such term does not include the underground injection of natural gas for purposes of storage.”

1996—Subsec. (b)(3)(B)(i). Pub. L. 104–182 substituted “number of States” for “number or States”.

1986—Subsec. (b)(2)(A). Pub. L. 99–339 inserted “or natural gas storage operations” after “production”.

1980—Subsec. (b)(1)(A). Pub. L. 96–502, § 4(c), substituted “effective on the date on which the applicable underground injection control program takes effect” for “effective three years after December 16, 1974”.

Subsec. (d)(1). Pub. L. 96–502, § 3, inserted provision that such term does not include the underground injection of natural gas for purposes of storage.

1977—Subsec. (b)(3). Pub. L. 95–190 added par. (3).