

will be available at the hearing for scheduling the order of testimony. A written transcript of the hearing will be prepared. The official record of the hearing will be kept open for 30 days after the hearing to allow submittal of supplementary information.

Dated: October 18, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-6461-5]

State of Alabama; Underground Injection Control (UIC) Program Revision; Approval of Alabama's Class II UIC Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA announces a proposed rulemaking, public hearing and public comment period regarding approval of Alabama's Class II Underground Injection Control (UIC) Program Revision to regulate as "underground injection" hydraulic fracturing associated with coal bed methane gas production. Section 1422(b)(4) of the Safe Drinking Water Act (SDWA) requires that prior to approving, disapproving, or approving in part a State's UIC program, the Administrator provide opportunity for a public hearing. This notification advises the public of the date, time and location of the public hearing. The public comment period and public hearing will provide EPA with information and public opinion necessary to approve, disapprove, or approve in part under provisions of section 1425 of the SDWA, the revision application from the Alabama Oil and Gas Board to regulate hydraulic fracturing of coal beds. The proposed rulemaking is the Agency's preliminary determination to approve revision to Alabama's Class II UIC program administered by the State Oil and Gas Board.

DATES: Written comments on EPA's proposed rule approving the Alabama Class II UIC Program Revision must be received by the close of business Monday, November 29, 1999. A public hearing will be held Monday, November 22, 1999, at 5:00 p.m. Central Standard Time (CST) to discuss approval of the

Alabama Class II UIC Program revision to regulate hydraulic fracturing of coal beds. Registration for the hearing will begin at 4:00 pm; however, speakers may also register prior to the meeting.

ADDRESSES: Persons wishing to comment upon or object to any aspects of this proposed approval action of Alabama's revision to its Class II Program are invited to submit oral or written comments at the public hearing or submit written comments to the Ground Water/Drinking Water Branch, Ground Water & UIC Section, United States Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960, Attention: Mr. Larry Cole. Copies of documents regarding this action are available for inspection and copying between 8:30 a.m. and 4:00 p.m. Monday through Friday at the following locations: Environmental Protection Agency, Region 4, 9th Floor Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960, PH: (404) 562-8190; and the State Oil & Gas Board of Alabama, 420 Hackberry Lane, Tuscaloosa, AL 35489-9780, PH: (205) 349-2852.

The public hearing will be held at the University of Alabama in the Sellers Auditorium of the Bryant Conference Center, 240 Bryant Drive, Tuscaloosa, Alabama 35401. Those interested should contact the Bryant Conference Center at (205) 348-8751 for directions.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cole, at (404) 562-9474 or at the following address: Environmental Protection Agency, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960.

SUPPLEMENTARY INFORMATION:

I. Background Information

On August 2, 1982, EPA granted primary enforcement responsibility (primacy) for the Class II Underground Injection Control (UIC) Program under section 1425 of the Safe Drinking Water Act (SDWA) to the State of Alabama. The SDWA requires EPA to approve an effective in-place state UIC Program to protect Underground Sources of Drinking Water (USDW) from endangerment that could result from the improper injection of fluids associated with, among other things, oil and gas production. On May 3, 1994, the Legal Environmental Assistance Foundation, Inc. (LEAF) submitted a petition to EPA to withdraw Alabama's UIC Program asserting that the State was not

regulating activities associated with coal bed methane gas production wells. Following EPA's May 5, 1995 denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF v. EPA*, 118 F. 3d 1467 (11th Cir. 1997), the Court held as follows: hydraulic fracturing activities constitute "underground injection" under Part C of the Safe Drinking Water Act, *id.* at 1478; all underground injection is required to be regulated (by permit or rule), *id.* at 1474; and hydraulic fracturing associated with coal bed methane gas production is not currently regulated under Alabama's UIC Program, *id.* at 1471. On February 18, 1999, the Eleventh Circuit issued a Writ of Mandamus directed at EPA to enforce its August 1997 decision. The Writ established a schedule for EPA to follow to determine whether, in light of the Court's ruling regarding hydraulic fracturing, EPA should withdraw approval of Alabama's UIC Program. The Writ also stated that once hydraulic fracturing associated with methane gas production is regulated as underground injection by the State of Alabama and the program revision is approved by EPA, the withdrawal proceedings may cease. To date, EPA has been following the Writ of Mandamus withdrawal schedule pending approval of Alabama's program revision.

Withdrawal Activities to Date

Section 1425 of the SDWA and subsequent published EPA guidance documents do not contain express procedures for the withdrawal of a section 1425 program. EPA has promulgated procedures for withdrawing a section 1422 program at 40 CFR 145.34(b). In light of the Court's Writ of Mandamus, which essentially tracks the withdrawal procedures in section 145.34(b), EPA followed these procedures in proposing to withdraw Alabama's section 1425 program.

On March 19, 1999, the Regional Administrator of EPA Region 4 notified the Supervisor of the State Oil and Gas Board of Alabama of EPA's decision to initiate the process to withdraw approval of the Alabama UIC Program. The Regional Administrator's notice to the Supervisor of the State Oil and Gas Board of Alabama constituted the first step in the withdrawal process. According to the procedures established in 40 CFR 145.34(b) and the Writ of Mandamus, the State was given 30 days after the notice to demonstrate that its UIC Program is in compliance with the SDWA and 40 CFR part 145 (i.e., that hydraulic fracturing associated with methane gas production is regulated as

"underground injection," by permit or rule, pursuant to the EPA approved Underground Injection Control Program). The Supervisor of the State Oil and Gas Board responded to the Regional Administrator's letter by a letter dated April 15, 1999. The response indicated that on March 5, 1999, the State Oil & Gas Board of Alabama promulgated rules which regulate hydraulic fracturing of coal bed methane gas wells by rule authorization. These new regulations were added as an Emergency Order and sent to the Alabama Legislative Reference Service under section 41-22-5 of the Code of Alabama (1975). They became effective on March 11, 1999, for a period of no longer than 120 days, and indicated that the State Oil & Gas Board rule would be made permanent prior to the expiration of the Emergency Order.

By letter dated May 18, 1999, the Regional Administrator notified the Supervisor of the State Oil and Gas Board that, in order for the regulation of hydraulic fracturing for coal bed methane to become part of an EPA approved UIC program, Alabama should submit a revised UIC program package containing new regulations to EPA for review and approval. That action constituted the second step in the withdrawal process set out in 40 CFR 145.34(b) and the Writ of Mandamus.

On May 21, 1999, Region 4 announced in the **Federal Register** a public hearing in the Tuscaloosa Public Library on July 28, 1999 giving the public the opportunity to comment on withdrawal of Alabama's Class II Underground Injection Control Program. Region 4 received written and oral comments at the hearing, but the hearing was canceled prior to conclusion by the Tuscaloosa Fire Marshall due to overcrowding. In the August 10, 1999, **Federal Register**, Region 4 rescheduled the July 28, 1999 public hearing for September 9, 1999, and extended the public comment period until September 16, 1999, allowing the public the opportunity to make comments concerning withdrawal of Alabama's Class II UIC program. At the September 9, 1999, public hearing, Region 4 received comments from concerned citizens, the Legal Environmental Assistance Foundation, industry representatives, and the Alabama Chapter of the Sierra Club. Comments obtained from both of those public hearings and written comments received until the close of business on September 16, 1999, are part of Region 4's administrative record on the proposed withdrawal of Alabama's UIC program.

EPA received a wide range of comments. Some considered Alabama's hydraulic fracturing rule, originally adopted by the Oil and Gas Board in March 1999, and revised by the Board in August 1999, adequate to protect underground sources of drinking water; others did not. Some comments at the public hearing reflected environmental concerns from hydraulic fracturing activities beginning in September of 1989. Other comments recommended adding a tracer to the hydraulic fracturing fluid in order to verify if the fracturing fluids are endangering USDWs. Some commented that potential over-regulation of the coal bed industry could place an undue economic burden on industry. Written and oral comments received at both public hearings, plus written comments received during the public notice comment period were reviewed by EPA Region 4 after the public notice comment period ended on Thursday, September 16, 1999.

On September 23, 1999, the Regional Administrator of Region 4 notified the Supervisor of the State Oil and Gas Board of Alabama's Class II UIC program's continuing specific deficiencies and necessary remedial actions. That action constituted the third step in the withdrawal process set out in 40 CFR 145.34(b). If the State of Alabama's program revision correcting the deficiencies is not approved by EPA through rulemaking by December 22, 1999, the Writ of Mandamus directs EPA to withdraw approval of Alabama's UIC Program.

Alabama Class II UIC Program Revision

The Safe Drinking Water Act required EPA to implement a regulatory program to prevent underground injection activities from endangering Underground Sources of Drinking Water (USDWs) which are aquifers capable of yielding a significant amount of drinking water containing less than 10,000 milligram per liter (mg/liter) of total dissolved solids. The State of Alabama currently has primary responsibility for implementing a UIC program preventing endangerment of USDWs. The Alabama Oil and Gas Board has held primary enforcement authority for the Class II UIC program since the program was originally approved by EPA pursuant to section 1425 of the SDWA on August 2, 1982. The application for program revision submitted by the Alabama Oil and Gas Board on October 6, 1999, requests that EPA approve the program revision for primary administrative and enforcement authority for the regulation of hydraulic fracturing of coal beds on all lands

subject to the State's police power and taxing authority and all lands owned or under the jurisdiction of the United States, except those wells located on Indian lands as defined in 40 CFR 144.3. The application includes a program description, copies of all applicable rules and forms, a statement of legal authority and appropriate memoranda of agreement.

EPA is proposing to approve Alabama's UIC program revision addressing hydraulic fracturing pursuant to section 1425 of the SDWA. Section 1425 provides that EPA may approve that portion of a State's UIC program which relates to "any underground injection for the secondary or tertiary recovery of oil or natural gas" if the program meets certain requirements of section 1421 and "represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources." EPA interprets section 1425 broadly as establishing an alternative method (in lieu of the showing required by section 1422(b)(1)(A)) for a State to obtain primary enforcement responsibility for those portions of its UIC program related generally to the recovery and production of oil and natural gas (46 FR 27333 (May 19, 1981)). Accordingly, EPA is proposing to approve the hydraulic fracturing component of Alabama's UIC program under section 1425.

Although section 1425 of the SDWA does not specifically refer to hydraulic fracturing for methane production, it is reasonable to assume that Congress would have intended that approval of State underground injection programs relating to this type of gas production activity would fall within the more flexible approval standards Congress established for oil- and gas-related injection programs in section 1425. The legislative history of section 1425 indicates that Congress intended it to cover the same set of underground injection practices related to oil and gas production as had been covered by section 1422, i.e., all of them. Nothing suggests that Congress, in creating an alternative demonstration for "secondary or tertiary recovery"-related injection under section 1425, was leaving behind another undefined category of oil- and gas-related injection activities for approval exclusively pursuant to section 1422. Congress' use of the terms "secondary or tertiary recovery" in section 1425 in all likelihood reflects nothing more than Congress' belief that those terms covered all relevant oil- and gas-related

injection activities. To conclude otherwise would require States to seek approval for their oil- and gas-related UIC program under *both* section 1425 and 1422. This would be both inefficient and inconsistent with Congress' expressed admonition that EPA not prescribe unnecessary requirements related to oil- and gas-related injection (42 U.S.C. 300h(b)(2)).

Pursuant to the State of Alabama's authority under section 9-17-6(c)(3) and (13) of the Code of Alabama and in accordance with the Eleventh Circuit's LEAF decision, the State Oil and Gas Board of Alabama adopted on August 20, 1999, a rule to regulate hydraulic fracturing of coal beds. This rule, submitted to EPA along with Alabama's program revision package, embodies the State's requirements for such fracturing activities. In summary, the new rule (Rule 400-4-5-.04) establishes standards and procedures which the State Oil and Gas Board of Alabama will apply when evaluating proposals to hydraulically fracture coal beds. Among other things, Rule 400-4-5-.04 of the State Oil and Gas of Alabama Administrative Code specifically provides that each coal bed shall be hydraulically fractured so as not to endanger any underground source of drinking water (USDW), and coal beds shall not be hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may cause a violation of any applicable primary drinking water regulation under 40 CFR part 141 or otherwise adversely affect the health of persons. It is EPA's interpretation that this is consistent with part C of the Safe Drinking Water Act.

The rule establishes requirements that, should hydraulic fracturing of coal bed operations occur in a USDW, the operator must certify that the injectate meets drinking water standards before approval for injection can be obtained. Additional requirements pertaining to the depth of the hydraulic fracturing operation and geologic confining strata were established to prevent impacts on private and public drinking water supplies. For example, hydraulic fracturing of coal beds is prohibited at depths of less than 300 feet from the surface. Fracturing at lower depths also requires additional demonstrations including delineation of drinking water use around the fracturing operation and assurances for the prevention of upward movement of fluids. For every proposal to hydraulically fracture a coal bed, written approval from the Oil and Gas Supervisor must be obtained before the operation can commence.

EPA Region 4 believes that Rule 400-4-5-.04's requirements, together with the additional elements of Alabama's revision package, represent an effective program to prevent underground injection which endangers drinking water sources. Section 1425 requires a State to demonstrate that its Underground Injection Control (UIC) Program meets the requirements of section 1421(b)(1)(A) through (D) and represents an effective program (including adequate record keeping and reporting) to prevent underground injection which endangers drinking water sources. Accordingly, section 1425 requires that a State, in order to receive approval under the optional demonstration, makes a successful showing that its program meets the following five conditions:

(1) Section 1421(b)(1)(A) requires that an approvable State program prohibit any underground injection in such State which is not authorized by permit or rule.

(2) Section 1421(b)(1)(B) requires that an approvable State program shall require that: (i) the applicant for a permit must satisfy the State that the underground injection will not endanger drinking water sources; and (ii), no rule may be promulgated which authorizes any underground injection which endangers drinking water sources.

(3) Section 1421(b)(1)(C) requires that an approvable State program include inspection, monitoring, record keeping, and reporting requirements.

(4) Section 1421(b)(1)(D) requires that an approvable State program apply to: (i) underground injection by Federal agencies; and (ii), underground injection by any other person, whether or not occurring on property owned or leased by the United States.

(5) Section 1425(a) requires that an approvable State program represent an effective program to prevent underground injection which endangers drinking water sources.

EPA Region 4 has concluded that the current Rule 400-4-5-.04, (Protection of Underground Sources of Drinking Water during the Hydraulic Fracturing of Coal Beds), along with the rest of Alabama's revision package, satisfies the above five conditions of section 1425 for approving a State's program. The basis for our conclusion for each condition is as follows:

(1) Rule 400-4-5-.04 (4) states, "Coal beds shall not be hydraulically fractured until the written approval of the Supervisor is obtained." This satisfies the requirement of section 1421(b)(1)(A).

(2) Section 1421(b)(1)(B)(i) is satisfied because, while the Alabama regulation does not establish a permit requirement, Rule 400-4-5-.04(4) states, "Coal beds shall not be hydraulically fractured until the written approval of the Supervisor is obtained." Section

1421(b)(1)(B)(ii) is also satisfied because Rule 400-4-5-.04(2) states, "Coal beds shall not be hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may: (a) cause a violation of any applicable primary drinking water regulation under 40 CFR part 141; or (b) otherwise adversely affect the health of persons."

(3) Section 1421(b)(1)(C) is satisfied since Rule 400-4-5-.04 includes inspection, monitoring, recordkeeping and reporting requirements. The State rule provides adequate inspection of a hydraulic fracturing operation in accordance with section 1421(b)(1)(C). The last sentence of Rule 400-4-5-.04(4) states that "In accordance with Rule 400-4-3-.01(2), the Supervisor may send a duly authorized representative to witness the fracturing operation." Additionally, Rule 400-4-5-.04(5)(c)(3), which covers coal beds in the depth interval 300 to 749 feet states that, "A representative of the Board shall conduct a field reconnaissance within a 1/4-mile radius of the coalbed methane gas well to determine the location of any additional fresh-water supply wells that may not be identified in the previous described documents."

The rule also provides for adequate monitoring of fracturing operations. Rule 400-4-5-.04(3) states that, "the operator shall certify in writing to the Supervisor that the proposed fracturing operation will not occur in a USDW," and provide evidence supporting how the determination was made. Otherwise, if the proposed fracturing occurs in a USDW, the operator shall certify in writing to the Supervisor that the mixture of fluids to be used to hydraulically fracture the coal beds does not exceed the maximum contaminant levels contained in 40 CFR part 141, subpart B and G. EPA believes these requirements of the Alabama State Rule adequately fulfill the monitoring requirements of an effective State program.

The rule provides for adequate reporting requirements. In addition to Rule 400-4-5-.04(3) mentioned above, Rule 400-4-5-.04(5)(a)(3) requires the submittal of Form OGB-7, Well Record and Completion Report, for casing and cementing specifications. If the coal bed methane gas well is in a state of completion or recompletion, and Form OGB-7 is not required to be filed with the Board prior to the fracturing operation, then the Supervisor shall require the operator to submit a wellbore schematic showing the specifications of the casing and cementing program.

The rule also provides for adequate recordkeeping. Rule 400-4-5-.04(7) requires that operators maintain records until such time that the coalbed methane gas well has been plugged for permanent abandonment, but not less than three (3) years following completion of the fracturing operation.

(4) Section 1421(b)(1)(D) is satisfied since the State's Rule and Alabama's existing UIC Program applies to all relevant entities. The Alabama Oil and Gas Board has the authority to regulate operators who hydraulically fracture coal beds. Rule 400-1-1.03(32) defines operator as "any person who, duly authorized, is in charge of the development of a lease or the operation of a producing well, and, in addition, for the purpose of assigning responsibility, may also be the person indicated as operator by the most current records of the Board." Rule 400-1-1-.03(34) defines person as "any natural person, firm, corporation, association, partnership, joint venture, receiver, trustee, guardian, executor, administrator, fiduciary, representative of any kind, or any other group acting as a unit, and the plural as well as the singular number." Therefore, this program revision applies to underground injection by Federal agencies and underground injection by any other person, whether or not occurring on property owned or leased by the United States.

(5) Finally, the requirement of section 1425 is met because the current revision application package and Rule 400-4-5-.04, represents an effective program under section 1425(a) to prevent underground injection which endangers drinking water sources. State Rule 400-4-5-.04 (2) states, "Coal beds shall not be hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may: (a) cause a violation of any applicable primary drinking water regulation under 40 CFR part 141; or (b) otherwise adversely affect the health of persons." This statement embodies and is consistent with the "endangerment" standard in section 1421(d)(2) of the SDWA. This statement provides the basic prohibition against hydraulic fracturing which endangers drinking water sources.

The State has also adopted a number of regulatory provisions preventing underground injection which endangers drinking water sources. State Rule 400-4-5-.04(3) states, "The operator shall certify in writing to the Supervisor that the proposed fracturing operation will not occur in a USDW. Evidence that supports how the determination was

made shall accompany such certification and be acceptable to the Supervisor. Otherwise, the operator shall certify in writing to the Supervisor that the mixture of fluids to be used to hydraulically fracture the coal beds does not exceed the maximum contaminant levels contained in 40 CFR part 141, subpart B and G." This provision requires a certification that fracturing fluids will not be injected into a USDW or establishes specifications for the specifications for the quality of the injectate should the injection occur into the USDW. Specifically, it states that the injectate must meet drinking water standards. Therefore, EPA concludes that adequate provisions have been established to prevent endangerment from hydraulic fracturing operations.

State Rule 400-4-5-.04(5)(a)5 states, "A geophysical log, or gamma ray log, shall be evaluated to determine the type and thickness of strata overlying the uppermost coal bed to be fractured. Impervious strata, such as shale, must overlie the uppermost coal bed and be of sufficient thickness and consistency to serve as a barrier to the upward movement of fluids. Otherwise, a fracturing proposal will be denied." This provision will ensure that underground injection will not cause movement of fluids from the fracturing zone, which may be of lesser quality, into upper underground sources of drinking water. Should injection occur below the USDW, where injectate quality will not be addressed by 400-4-5-.04(3), this provision prohibits the upward movement of injectate and other formation fluids into the USDW. The quality (measured as total dissolved solids) of aquifers in the formations where hydraulic fracturing of coal beds occurs generally decreases as depth of the aquifer increases (Passion et al, 1991; Passion and Hinkle, 1997). In other words, if injection does not occur in a USDW, it is probably below the lowermost USDW. Therefore, injection occurring below the USDW is prevented from moving upwards into the USDW and downward movement would not be towards a USDW. EPA concludes that adequate provisions have been established to prevent endangerment from movement of injection fluids and formation fluids into a USDW.

Additional protection is afforded because operators will be required to follow the requirements of Rule 400-4-3-.02, Casing Requirements, which will be evaluated by the Supervisor to ensure compliance. Hydraulic fracturing will not be allowed unless the coalbed methane well is constructed in accordance with Rule 400-4-3.02. Rule 400-4-3.02 provides requirements to

ensure the integrity of the surface casing and provides minimum criteria for cased hole and open-hole completion of coalbed methane wells. In accordance with Rule 400-4-5.04(2), "any coalbed methane gas well that is not constructed in accordance with Rule 400-4-3-.02 shall not be allowed to produce and may be required to be immediately plugged and abandoned." Therefore, EPA concludes that adequate provisions have been established to prevent endangerment during hydraulic fracturing caused by well integrity failure.

Additionally, a Cement Bond Log shall be evaluated for coal bed proposals in the 750-1000 feet depth range and is required for Coal Bed proposals in the 300-749 feet depth range to ascertain the top of cement and degree of bonding above the upper most coal bed to be fractured. Rule 400-4-5-.04(5)(c) also requires that records of fresh-water supply wells within a 1/4-mile radius of the coal bed gas well shall be used in delineating the construction and completion depth of such supply wells. A field reconnaissance within a 1/4-mile radius to determine the location of any additional fresh-water supply wells shall be conducted by the Board. Fracturing operations shall not be allowed if the Supervisor determines that any fresh-water supply well located within 1/4-mile radius of the coal bed methane gas well could be adversely impacted in a manner described in part 400-4-5.04(2) of the rule as a result of the fracturing operation. All of these provisions provide additional assurances that underground injection does not endanger drinking water sources.

Rule 400-1-1.06, referenced in Alabama's revision package, requires operators to allow and assist State agents in making any and all inspections that may be required by the Board. The agents are to have access to all records and shall be permitted to come upon any property at all times to make such inspections. This ensures an adequate surveillance program is in place to determine compliance with its requirements of Rule 400-4-5.04 and State regulations and provides an effective means to enforce against violators.

EPA concludes that Alabama's UIC revision application satisfies section 1425(a) which requires that an approvable State program represents an effective program to prevent underground injection which endangers drinking water sources.

At the public hearing EPA will accept comments on its proposal to approve Alabama's review to its Class II UIC

Program covering hydraulic fracturing. Copies of **Federal Register** outlining this rule will be available at the public hearing and can be also be obtained by contacting Larry Cole at EPA.

II. Regulatory Impact

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

a. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

b. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

c. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

d. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule does not meet any of the conditions described above and therefore, is not a "significant regulatory action" and is not subject to OMB review. The rule would only approve regulations adopted by the State of Alabama and effective as a matter of State law and, therefore, would not itself adversely affect in a material way any of the activities or entities referred to in the Executive Order.

B. Executive Order 13045: Children's Health Protection

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks authorized by this action impact children. The rule would merely approve regulations adopted by the State of Alabama and effective as a matter of State law and would not itself bring about any changes in environmental protection in the State of Alabama. Therefore it would not present any foreseeable effect on children's health and well being.

C. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply to this proposed rule since no information collection requirements would be established by this rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to prepare an initial regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of any proposed rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare an initial regulatory flexibility analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposed rule would not have a significant economic impact on small entities.

This rule would not have a significant economic impact on a substantial number of small entities because the rule would not create any new requirements but merely approve regulations adopted by the State of Alabama and effective as a matter of State law. Accordingly, the rule would impose no additional requirements on small entities beyond those already imposed under Alabama law and, therefore, would have no economic impact on such entities.

E. Executive Orders on Federalism

Under Executive Order 12875 (48 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those

governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule would not create a mandate on state, local or tribal governments. The rule would not impose any enforceable duties on these entities. The rule would merely approve regulations adopted by the State of Alabama to ensure that hydraulic fracturing of coal bed seams in connection with methane gas production will not endanger underground sources of drinking water.

On August 4, 1999, President Clinton issued a new Executive Order on Federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, because this rule would affect only one State. This rule would simply approve regulations adopted by the State of Alabama to ensure that hydraulic fracturing of coal bed seams in connection with methane production will not endanger underground sources of drinking water and make such regulations part of the federally-approved UIC program that the State has voluntarily chosen to operate.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may

result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a federal mandate (under the regulatory provisions of Title II of UMRA) for state, local, and tribal governments, or the private sector. Today's rule would merely approve requirements already in place in the State of Alabama. The rule would impose no additional enforceable duty on any state, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, thus, today's rule is not subject to the requirements of section 203 of UMRA.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods,

sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA does not believe that this proposed rule addresses any technical standards subject to the NTTAA.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule would not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 147

Environmental protection, Intergovernmental relations, Water supply.

Dated: October 14, 1999.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

For the reasons set out in the preamble, 40 CFR part 147 is proposed to be amended as follows:

PART 147—[AMENDED]

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

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

Subpart B—Alabama

2. Section 147.52 is added to Subpart B to read as follows:

§ 147.52 State-administered program—Hydraulic Fracturing of Coal Beds.

The UIC program for hydraulic fracturing of coal beds in the State of Alabama, except those on Indian lands, is the program administered by the State Oil and Gas Board of Alabama, approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on [date of final rule]; the effective date of this program is 30 days after the date of publication of the Notice of Approval. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Incorporation by reference. The requirements set forth in the State regulations, 400-4-5-.04, Protection of Underground Sources of Drinking Water during the Hydraulic Fracturing of Coal Beds, are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Alabama. This incorporation by reference was approved by the Director of the **Federal Register** on _____ in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) The Memorandum of Agreement between EPA Region 4 and the Alabama Oil and Gas Board and addendums signed by the EPA Regional Administrator.

(c) Statement of Legal Authority. "Pursuant to my authority as Attorney General for the State of Alabama and for reasons set forth in this statement, I hereby certify that in my opinion, the laws of the State of Alabama provide the State Oil and Gas Board (hereinafter referred to as "the Board") adequate authority to carry out an Underground Injection Program for the control of underground injection activity related to the hydraulic fracturing of coal beds." Opinion by Attorney General dated October 8, 1999.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

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