

The EPA Administrator, Andrew R. Wheeler, signed the following final rule on 8/31/2020, and EPA is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the proposed rule, it is not the official version of the proposed rule for purposes of public comment. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (<https://www.gpo.gov/fdsys/>). It will also appear on Regulations.gov (<https://www.regulations.gov/>) in Docket No. EPA-HQ-OW-2020-0123. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2020-0123; FRL-10013-68-OW]

Wyoming Underground Injection Control Program; Class VI Primacy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is hereby approving an application from the State of Wyoming under the Safe Drinking Water Act (SDWA) to implement an underground injection control (UIC) program for Class VI injection wells to protect underground sources of drinking water located within the state, except within Indian lands. EPA will continue to administer all well classes within Indian lands. Class VI wells are used for the underground injection of carbon dioxide into deep subsurface rock formations for long-term storage.

DATES: This final rule is effective on **[insert date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. **EPA-HQ-OW-2020-0123**. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Molly McEvoy, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-4765; email address: mcevoy.molly@epa.gov or Wendy Cheung, Underground Injection Control Section, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8WD–SDU, Denver, Colorado 80202; telephone number: (303) 312-6242; email address: cheung.wendy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The State of Wyoming received primacy enforcement responsibility (primacy) for Class I, III, IV, and V injection wells under the SDWA section 1422 on August 17, 1983, and Class II injection wells under the SDWA section 1425 on December 23, 1982.

Wyoming has applied to EPA under section 1422 of the SDWA, 42 U.S.C. 300h-1, for primacy for Class VI injection wells, except those located on Indian lands. The UIC program revision package from Wyoming includes a description of the State Underground Injection Control program for Class VI injection wells, copies of all

applicable rules and forms, a statement of legal authority, a summary and results of Wyoming's public participation activities, and a Memorandum of Agreement between Wyoming and EPA's Regional Administrator for Region 8.

This action is based on a legal and technical review of the State of Wyoming's application as directed in the *Code of Federal Regulations* (CFR) at 40 CFR part 145. As a result of this review, EPA is approving Wyoming's application because it meets or exceeds all applicable requirements for approval under the SDWA section 1422 and the Agency has determined that the state is capable of administering a Class VI UIC program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations to protect underground sources of drinking water (USDWs).

II. Legal Authorities

This regulation is being promulgated under authority of the SDWA sections 1422 and 1450, 42 U.S.C. 300h-1 and 300j-9.

III. Requirements for State UIC Programs

SDWA section 1421 requires the Administrator of EPA to promulgate minimum requirements for effective state UIC programs to prevent underground injection activities that endanger USDWs. SDWA section 1422 establishes requirements for states seeking EPA approval of state UIC programs.

For states that seek approval for UIC programs under SDWA section 1422, EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements, codified at 40 CFR part 145. It includes requirements for state permitting programs (by referencing certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

IV. Wyoming's Application

A. Background

On January 31, 2020, Wyoming submitted a program revision application to add Class VI injection wells to the state's SDWA section 1422 UIC program. The UIC program revision package from Wyoming includes a description of the state UIC program for Class VI injection wells, copies of all applicable rules and forms, a statement of legal authority, a summary and results of Wyoming's public participation activities, and a Memorandum of Agreement between Wyoming and EPA's Regional Administrator for Region 8. EPA reviewed the application for completeness and simultaneously performed a technical evaluation of the application materials.

On April 14, 2020, EPA published a *Federal Register* document announcing Wyoming's submittal of a complete UIC program revision application to the Agency. In that document, EPA proposed to approve the application from Wyoming under the SDWA section 1422 to implement a UIC program for Class VI injection wells located within the state, except those on Indian country; sought public comments on the Agency's intent to approve Wyoming's application; and provided an opportunity to request a public hearing.

B. Public Participation Activities Conducted by the State of Wyoming

In 2019, Wyoming held two public hearings with public comment periods on the state's intent to adopt its Class VI UIC regulations. The Wyoming Water and Waste Advisory Board (WWAB) held the first public hearing on June 25, 2019, in Casper, Wyoming. The WWAB accepted public comments beginning on May 17, 2019, through

the adjournment of the public hearing. The Wyoming Environmental Quality Council held the second public hearing on November 19, 2019, in Cheyenne, Wyoming. The Wyoming Environmental Quality Council accepted comments on proposed revisions from September 13, 2019, through October 30, 2019. The Wyoming Class VI regulations were signed by the Governor of Wyoming on January 23, 2020. Documentation of all public participation activities, including those associated with Class VI UIC regulations and subsequent revisions that the state proposed before 2019 can be found in EPA's Docket ID No. EPA-HQ-OW-2020-0123.

C. Public Participation Activities Conducted by EPA

On April 14, 2020, EPA issued a proposed rule (85 FR 20621), proposing to approve Wyoming's application to implement a UIC program for Class VI injection wells. This proposed rule provided that a public hearing would be held if requested. EPA did not receive any requests for a public hearing.

V. Public Comments Received on the Proposed Rule and EPA's Response to Comments

As previously noted, on April 14, 2020, EPA issued a proposal to approve the Wyoming application to implement the Class VI UIC program within the state (85 FR 20621) and requested public comments. The public comment period was open for 45 days and ended on May 29, 2020. EPA received seven public comment submissions. Of the seven commenters, all submitted comments in support of the rule and one requested clarification on certain aspects of Wyoming's UIC Class VI Program. After close consideration of the comments and coordination with the Wyoming Department of Environmental Quality, EPA provided clarification on the areas where the commenter

requested clarification. The comments received and EPA's responses are available in EPA's Docket No. EPA-HQ-OW-2020-0123.

VI. EPA's Approval – Incorporation by Reference

In this action, EPA is approving the State of Wyoming's Class VI UIC program; whereby the state will assume primacy for regulating Class VI injection wells in the state, except within Indian lands. Wyoming's statutes and supporting documentation are publicly available in EPA's Docket No. EPA-HQ-OW-2020-0123. This action amends 40 CFR part 147 and incorporates by reference EPA-approved state statutes and regulations. EPA will continue to administer the UIC program for all well classes within Indian lands.

The provisions of the State of Wyoming's statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators of UIC Class VI wells are incorporated by reference into 40 CFR 147.2250 by this rule. Provisions of the State of Wyoming's statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators of Class I, III, IV, and V injection wells have already been incorporated by reference into 40 CFR 147.2250 through prior EPA rules. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by EPA pursuant to the SDWA section 1423 and 40 CFR 147.1(e).

In order to better serve the public, EPA is reformatting the codification of EPA-approved Wyoming SDWA section 1422 UIC program statutes and regulations for well Classes I, III, IV, V and VI. Instead of codifying the Wyoming statutes and regulations as separate paragraphs, EPA is now incorporating by reference a notebook that contains EPA-approved Wyoming statutes and regulations for well Classes I, III, IV, V, and VI.

This notebook is incorporated by reference into 40 CFR 147.2250 and is available at <https://www.regulations.gov> in the docket for this rule. A complete list of the contents of the notebook titled “EPA-approved Wyoming SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI” is codified as Table 1 to paragraph (a) in that section.

EPA will continue to oversee the State of Wyoming’s administration of the SDWA Class VI program. As part of EPA’s oversight responsibility, EPA will require Wyoming to submit semi-annual reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the State of Wyoming, signed by the Regional Administrator on March 20, 2020, makes available to EPA any information obtained or used by Wyoming’s Class VI UIC program, without restriction.

VII. Effective Date

This final rule is effective immediately upon publication. Section 553(d) of the Administrative Procedure Act (“APA”), 5 U.S.C. 553(d), provides that final rules shall not become effective until 30 days after publication in the *Federal Register*, “except . . . as otherwise provided by the agency for good cause,” among other exceptions. The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected

persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” Gavrilovic, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because this action will simply provide that the State of Wyoming has primacy under the SDWA for the UIC Class VI program, pursuant to which the State of Wyoming will be implementing and enforcing a state regulatory program that is as stringent as the existing federal program. At this time, there are no federally permitted Class VI wells in Wyoming. As a result, there are no current permittees that need time to prepare for this rule and any prospective permittees will benefit from the regulatory certainty that an immediate effective date will provide. This final rule will not require affected persons to take action or change behavior to come into compliance within the next 30 days. For these reasons, EPA finds that good cause exists under section 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication.

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is exempt from review by the Office of Management and Budget (OMB) because it is an approval of a state UIC program.

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

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

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042. Reporting or recordkeeping requirements will be based on Wyoming's UIC Regulations, and the State of Wyoming is not subject to the PRA.

D. Regulatory Flexibility Act (RFA)

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

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. EPA's approval of Wyoming's program will not constitute a federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a state, rather than a federal program.

F. Executive Order 13132: Federalism

EPA has concluded that this action has federalism implications. Although federalism concerns were implicated by this action, on the distribution of power and responsibilities among the state and federal government, the other criteria identified in Executive Order (E.O.) 13132 do not apply. See E.O. 13132(6)(b)&(c). For example, this action does not impose substantial direct compliance costs on the state, which voluntarily sought primacy. Moreover, EPA is required by statute to approve a primacy application that meets applicable requirements. Finally, this action does not preempt state law.

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

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

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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

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

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

J. National Technology Transfer and Advancement Act

This action does not involve technical standards.

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

EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action is simply approving primacy for Wyoming under the SDWA for the Class VI UIC program, pursuant to which Wyoming will be implementing and enforcing a state regulatory program that is as stringent as the existing federal program.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). EPA has made a good cause finding for this rule for an immediate effective date as discussed in Section VII of this document, which includes the basis for that finding.

List of Subjects in 40 CFR 147: Environmental protection, Incorporation by reference, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Andrew Wheeler,
Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 147 as follows:

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

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

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

1. Amend § 147.2550 by:
 - a. Revising the section heading;
 - b. Revising the introductory text and paragraph (a);
 - c. Adding paragraphs (c)(6) and (7), and (d)(3) and (4); and
 - d. Revising paragraph (e).

The revisions and additions read as follows.

§ 147.2550 State-administered program—Class I, III, IV, V and VI wells.

The UIC program for Class I, III, IV, and V wells in the State of Wyoming, except those located on Indian lands, is the program administered by Wyoming Department of Environmental Quality, approved by EPA pursuant to the Safe Drinking Water Act (SDWA) section 1422. The effective date of this program is August 17, 1983. The UIC Program for Class VI wells in Wyoming, except those located on Indian lands, is the program administered by Wyoming Department of Environmental Quality, approved by EPA pursuant to the SDWA section 1422. The effective date of this program is [Insert date of publication in the Federal Register]. The UIC program for Class I, III, IV, V, and VI wells in the State of Wyoming, except those located on Indian lands, consists of the following elements, as submitted to the EPA in the State's program application and program revision application.

(a) *Incorporation by reference.* The requirements set forth in the state statutes and regulations cited in the notebook entitled “*EPA-Approved Wyoming SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI,*” dated March 31, 2020 (contained in Table 1 to paragraph (a) of this section), are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for Wyoming. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the State of Wyoming’s regulations that are incorporated by reference may be inspected at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8WD–SDU, Denver, Colorado 80202 and the Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. If you wish to obtain materials from the EPA Regional Office, please call (303) 312-7226; for materials from a docket in the EPA Headquarters Library, please call the Water Docket at (202) 566-2426. You may also inspect the materials at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

Table 1 to Paragraph (a) EPA-Approved Wyoming SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI			
State citation	Title/subject	State effective date	EPA approval date ¹
Wyoming Statutes sections 35-11-101 through 35-11-115, and 35-11-301 through 35-11-305.	Wyoming Environmental Quality Act	1989	March 6, 1991, 56 FR 9421.
Water Quality Rules and Regulations, Wyoming Department of	Regulations for Permit to Construct, Install or Modify	1983	May 11, 1984, 49 FR 20197.

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the *Federal Register* notice cited in this column for the particular provision.

Table 1 to Paragraph (a) EPA-Approved Wyoming SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI			
State citation	Title/subject	State effective date	EPA approval date ¹
Environmental Quality Chapter III: Regulations for Permit to Construct, Install or Modify Public Facilities Capable or, (sic) Causing or Contributing to Pollution	Public Water Supplies, Wastewater Facilities, Disposal Systems, Biosolids Management Facilities, Treated Wastewater Reuse Systems and Other Facilities Capable of Causing or Contributing to Pollution		
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter VIII: Quality Standards for Groundwaters of Wyoming	Quality Standards for Groundwaters of Wyoming	1980	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter IX: Wyoming Groundwater Pollution Control Permit	Wyoming Groundwater Pollution Control Permit	1980	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XIII: Prohibitions of Permits for New Hazardous Waste Injection Wells	Prohibitions of Permits for New Hazardous Waste Injection Wells	1989	March 6, 1991, 56 FR 9421.
Land Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXI: In Situ Mining	In Situ Mining	1981	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXIV: Class VI Injection Wells and Facilities Underground and Injection Control Program	Class VI Injection Wells and Facilities Underground and Injection Control Program	2020	[Insert date of publication in the Federal Register]

*(c) Statements of agreement ****

(6) Memorandum of Agreement addendum between EPA, Region VIII, and Wyoming Department of Environmental Quality, signed by the EPA Regional Administrator on March 20, 2020.

(7) Letter from Governor of Wyoming to Regional Administrator, EPA Region VIII, “Re: UIC Program Class VI Application,” January 23, 2020.

*(d) Statement of legal authority. ****

(3) “Attorney General’s Statement – “Attorney General’s Statement to Accompany Wyoming’s Underground Injection Control Program Class VI Primacy Application,” signed by Attorney General and Assistant Attorney General for the State of Wyoming, January 9, 2020.

(4) Letter from the Attorney General for the State of Wyoming to Regional Counsel, EPA Region VIII, “Re: Wyoming Underground Injection Control Program Class VI Regulations,” October 25, 2019.

(e) The Program Description and any other materials submitted as part of the application or amendment thereto, and the Program Description and any other materials submitted as part of the revision application or amendment thereto.