

## **Alabama Rural Water Warns New IRS Proposal to Change Definition of "Political Subdivision" Could Have Major Impact on Water Utilities:**

On February 23, the Internal Revenue Service proposed [new rules](#) for political subdivisions issuing tax-exempt bonds that critics claim will completely change the way water infrastructure has been financed in a number of states. This regulation is significant because it proposes that an entity that is not a "political subdivision" cannot issue tax-exempt bonds. The new definition states an entity is a political subdivision that can issue tax-exempt bonds only if it meets a three-prong test -- it must exercise sovereign powers, serve a governmental purpose, and be governmentally controlled. The requirement to be governmentally-controlled is new. Some rural utility districts have been set up to issue tax-exempt bonds to finance water utility projects. The IRS wants political subdivisions to be controlled by state or local governments or a group of elected officials that do not constitute a "private faction." The proposed rules would take effect beginning 90 days after they are finalized. However, they would not apply to existing tax-exempt bonds or to refundings that do not extend the maturities of the underlying bonds. Also, there would be a three-year transition period under which entities in existence "prior to 30 days after the proposed rules are published" could continue to issue tax-exempt bonds while restructuring to comply with the new rules. The new definition is a reaction to a 2013 case where the IRS concluded that the Village Center Community Development District in Florida was not a political subdivision and therefore could not have issued millions of dollars of tax-exempt bonds as it did from 1993 to 2004 because its board was and will always be controlled by the developer rather than publicly elected officials. Historically, the determination of whether an entity was a political subdivision was based on whether it had the right to exercise substantial sovereign powers such as the power to tax for services. The IRS commented, "We'll put water systems into the pot of those that we do not want to—with zeal—disrupt and we'll consider the impact on them carefully as we move forward."

**What Constitutes "Control":** In its proposal, the IRS would provide at least three benchmarks of rights or powers that constitute control. These would be the right or power to: both approve and remove a majority of an entity's governing body; elect a majority of the governing body of the entity in periodic elections of reasonable frequency; and approve or direct the significant uses of funds or assets of the entity in advance of those uses. The IRS provides two facts and circumstances tests that serve as brackets to determine if there is governmental control. One, the number of private persons controlling an electorate "is always unreasonably small" if the combined votes of the three voters with the largest share of votes

determine the outcome of an election regardless of how the other voters vote. Second, the number of private persons controlling an electorate "is never unreasonably small" if determining the outcome of an election requires the combined votes of more voters than the 10 with the largest share of votes. "For example, control can always be vested in any electorate comprised of 20 or more voters that each have the right to cast one vote in an election without giving rise to a *private faction*," the IRS said.

### **Attorney Seeks Wider House Oversight Probe Of EPA's Handling Of**

**PFOA:** An attorney who has long urged EPA to address drinking water contaminated by perfluorooctanoic acid (PFOA) is suggesting the House oversight panel broaden its probe of EPA's response to PFOA water contamination in a New York community to consider the agency's nationwide handling of the chemical's contamination of drinking water. The attorney who has represented plaintiffs potentially exposed to perfluorinated chemicals (PFCs) in their drinking water from DuPont's Washington Works facility in West Virginia suggests lawmakers expand their examination into whether EPA delayed taking action to warn residents of the village of Hoosick Falls, NY about unsafe levels of PFOA in their drinking water. **Missouri and Utah Rural Water Release New Homepages Last Week** ([MRWA](#) and [URWA](#)).

### **Drinking Water Disinfection Chemical Turned into Weapons in Syria:**

Last Monday, bombs suspected to contain chlorine gas were dropped on a town in Syria. About 30 people, mostly women and children, have been affected ([BBC](#)).

### **EPA Releases Guidance for Drinking Water Officials on How to Use Public Health Data to Detect and Respond to Drinking Water**

**Contamination:** The [July 2016 Guidance](#) offers recommendations on how utilities can identify and collaborate with public health partners to generate and monitor data for disease clusters.

### **DHS Plans To Postpone Overhaul Of CFATS Chemicals List To**

**Future Rule:** The Department of Homeland Security (DHS) is postponing significant revisions to the list of chemicals covered under its industrial facility security program. Last week, a DHS official said major changes to the covered chemicals listed in Appendix A of the CFATS regulation are unlikely. Through CFATS, DHS regulates the security of facilities holding threshold amounts of chemicals on the program's "Appendix A" list. OSHA regulates facility processes that could threaten worker safety through its process safety management standard (PSM), and EPA seeks to reduce off-site consequences through its risk management plan facility accident prevention program (RMP). OSHA is considering expanding PSM to cover

new chemicals.

**Black Lives Matter Movement Urges Action on Environmental Racism and Drinking Water:** The Movement for Black Lives Matter released a [policy platform](#) on August 1. The organization says environmental racism has led to lack of access to clean and safe water. The policy agenda also criticizes the increasing privatization of water.

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### **National Rural Water Association**

Contact: Mike Keegan, Policy Analyst <[keegan@ruralwater.org](mailto:keegan@ruralwater.org)>  
(Washington, DC)

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