

Subpart D—Federal Enforcement**§ 142.30 Failure by State to assure enforcement.**

(a) The Administrator shall notify a State and the appropriate supplier of water whenever he finds during a period in which the State has primary enforcement responsibility for public water systems that a public water system within such State is not in compliance with any primary drinking water regulation contained in part 141 of this chapter or with any schedule or other requirements imposed pursuant to a variance or exemption granted under section 1415 or 1416 of the Act: *Provided*, That the State will be deemed to have been notified of a violation referred to in a report submitted by the State.

(b) The Administrator shall provide advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance by the earliest feasible time.

[41 FR 2918, Jan. 20, 1976, as amended at 52 FR 20675, June 2, 1987]

§ 142.31 [Reserved]**§ 142.32 Petition for public hearing.**

(a) If the Administrator makes a finding of noncompliance pursuant to § 142.30 with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information as described in § 142.33.

(b) A petition for a public hearing pursuant to paragraph (a) of this section shall be filed with the Administrator and shall include the following information:

(1) The name, address and telephone number of the individual or other entity requesting a hearing.

(2) If the petition is filed by a person other than the State or public water system, a statement that the person is served by the system.

(3) A brief statement of information that the requesting person intends to submit at the requested hearing.

(4) The signature of the individual submitting the petition; or, if the petition is filed on behalf of a State, public water system or other entity, the signature of a responsible official of the State or other entity.

§ 142.33 Public hearing.

(a) If the Administrator grants the petition for public hearing, he shall give appropriate public notice of such hearing. Such notice shall be by publication in the FEDERAL REGISTER and in a newspaper of general circulation or by other appropriate communications media covering the area served by such public water system.

(b) A hearing officer designated by the Administrator shall gather during the public hearing information from technical or other experts, Federal, State, or other public officials, representatives of the public water system, persons served by the system, and other interested persons on:

(1) The ways in which the system can within the earliest feasible time be brought into compliance, and

(2) The means for the maximum feasible protection of the public health during any period in which such system is not in compliance.

(c) On the basis of the hearing and other available information the Administrator shall issue recommendations which shall be sent to the State and public water system and shall be made available to the public and communications media.

§ 142.34 Entry and inspection of public water systems.

(a) Any supplier of water or other person subject to a national primary drinking water regulation shall, at any time, allow the Administrator, or a designated representative of the Administrator, upon presenting appropriate credentials and a written notice of inspection, to enter any establishment, facility or other property of such supplier or other person to determine whether such supplier or other person has acted or is acting in compliance with the requirements of the Act or

subchapter D of this chapter. Such inspection may include inspection, at reasonable times, of records, files, papers, processes, controls and facilities, or testing of any feature of a public water system, including its raw water source.

(b) Prior to entry into any establishment, facility or other property within a State which has primary enforcement responsibility, the Administrator shall notify, in writing, the State agency charged with responsibility for safe drinking water of his intention to make such entry and shall include in his notification a statement of reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. The Administrator shall in any event offer the State agency the opportunity of having a representative accompany the Administrator or his representative on such entry.

(c) No State agency which receives notice under paragraph (b) of this section may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; if a State so uses such information, notice to the agency under paragraph (b) of this section is not required for subsequent inspections of public water systems until such time as the Administrator determines that the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice received under paragraph (b) of this section.

Subpart E—Variances Issued by the Administrator Under Section 1415(a) of the Act

§ 142.40 Requirements for a variance.

(a) The Administrator may grant one or more variances to any public water system within a State that does not have primary enforcement responsibility from any requirement respecting a maximum contaminant level of an applicable national primary drinking water regulation upon a finding that:

(1) Because of characteristics of the raw water sources which are reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulations despite application of the best technology, treatment techniques, or other means, which the Administrator finds are generally available (taking costs into consideration); and

(2) The granting of a variance will not result in an unreasonable risk to the health of persons served by the system.

(b) The Administrator may grant one or more variances to any public water system within a State that does not have primary enforcement responsibility from any requirement of a specified treatment technique of an applicable national primary drinking water regulation upon a finding that the public water system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system.

§ 142.41 Variance request.

A supplier of water may request the granting of a variance pursuant to this subpart for a public water system within a State that does not have primary enforcement responsibility by submitting a request for a variance in writing to the Administrator. Suppliers of water may submit a joint request for variances when they seek similar variances under similar circumstances. Any written request for a variance or variances shall include the following information:

(a) The nature and duration of variance requested.

(b) Relevant analytical results of water quality sampling of the system, including results of relevant tests conducted pursuant to the requirements of the national primary drinking water regulations.

(c) For any request made under § 142.40(a):

(1) Explanation in full and evidence of the best available treatment technology and techniques.

(2) Economic and legal factors relevant to ability to comply.