

## § 142.44

## 40 CFR Ch. I (7-1-06 Edition)

improvement of the existing raw water source, specify an indefinite time period for compliance until a new and effective treatment technology is developed at which time a new compliance schedule shall be prescribed by the Administrator.

(f) The proposed schedule for implementation of additional interim control measures during the period of variance shall specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting the additional interim control measures are to be met.

(g) The schedule shall be prescribed by the Administrator at the time of granting of the variance, subsequent to provision of opportunity for hearing pursuant to § 142.44.

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

### **§ 142.44 Public hearings on variances and schedules.**

(a) Before a variance and schedule proposed by the Administrator pursuant to § 142.43 may take effect, the Administrator shall provide notice and opportunity for public hearing on the variance and schedule. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice.

(b) Public notice of an opportunity for hearing on a variance and schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed variance and schedule, and shall include at least the following:

(1) Posting of a notice in the principal post office of each municipality or area served by the public water system, and publishing of a notice in a newspaper or newspapers of general circulation in the area served by the public water system; and

(2) Mailing of a notice to the agency of the State in which the system is located which is responsible for the State's water supply program, and to other appropriate State or local agencies at the Administrator's discretion.

(3) Such notice shall include a summary of the proposed variance and

schedule and shall inform interested persons that they may request a public hearing on the proposed variance and schedule.

(c) Requests for hearing may be submitted by any interested person other than a Federal agency. Frivolous or insubstantial requests for hearing may be denied by the Administrator. Requests must be submitted to the Administrator within 30 days after issuance of the public notices provided for in paragraph (b) of this section. Such requests shall include the following information:

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

(2) A brief statement of the interest of the person making the request in the proposed variance and schedule, and of information that the requester intends to submit at such hearing;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

(d) The Administrator shall give notice in the manner set forth in paragraph (b) of this section of any hearing to be held pursuant to a request submitted by an interested person or on his own motion. Notice of the hearing shall also be sent to the persons requesting the hearing, if any. Notice of the hearing shall include a statement of the purpose of the hearing, information regarding the time and location for the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing. At least one hearing location specified in the public notice shall be within the involved State. Notice of hearing shall be given not less than 15 days prior to the time scheduled for the hearing.

(e) A hearing convened pursuant to paragraph (d) of this section shall be conducted before a hearing officer to be designated by the Administrator. The hearing shall be conducted by the hearing officer in an informal, orderly and expeditious manner. The hearing officer shall have authority to call witnesses, receive oral and written testimony and take such other action as

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may be necessary to assure the fair and efficient conduct of the hearing. Following the conclusion of the hearing, the hearing officer shall forward the record of the hearing to the Administrator.

(f) The variance and schedule shall become effective 30 days after notice of opportunity for hearing is given pursuant to paragraph (b) of this section if no timely request for hearing is submitted and the Administrator does not determine to hold a public hearing on his own motion.

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

### § 142.45 Action after hearing.

Within 30 days after the termination of the public hearing held pursuant to § 142.44, the Administrator shall, taking into consideration information obtained during such hearing and relevant information, confirm, revise or rescind the proposed variance and schedule.

[52 FR 20675, June 2, 1987]

### § 142.46 Alternative treatment techniques.

The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation to a supplier of water, whether or not the public water system for which the variance is requested is located in a State which has primary enforcement responsibility, upon a showing from any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirements were prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

## Subpart F—Exemptions Issued by the Administrator

### § 142.50 Requirements for an exemption.

(a) The Administrator may exempt any public water system within a State that does not have primary enforce-

ment responsibility from any requirement regarding a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

(1) Due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 1452(d) of the Act), the public water system is unable to comply with such contaminant level or treatment technique requirement or to implement measures to develop an alternative source of water supply;

(2) The public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or for a public water system that was not in operation by that date, no reasonable alternative source of drinking water is available to such new public water system;

(3) The granting of the exemption will not result in an unreasonable risk to health; and

(4) Management or restructuring changes (or both), as provided in § 142.20(b)(1)(i), cannot reasonably be made that will result in compliance with the applicable national primary drinking water regulation or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) No exemption shall be granted unless the public water system establishes that the public water system is taking all practicable steps to meet the standard; and

(1) The public water system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to Section 1412(b)(10) of the Act;

(2) In the case of a public water system which needs financial assistance for the necessary improvements, the public water system has entered into an agreement to obtain such financial assistance or assistance pursuant to Section 1452 of the Act, or any other Federal or State program that is reasonably likely to be available within the period of the exemption; or

(3) The public water system has entered into an enforceable agreement to