

Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations that are no less stringent than the national primary drinking water regulations promulgated by the Administrator under subsections (a) and (b) of section 300g-1 of this title not later than 2 years after the date on which the regulations are promulgated by the Administrator, except that the Administrator may provide for an extension of not more than 2 years if, after submission and review of appropriate, adequate documentation from the State, the Administrator determines that the extension is necessary and justified;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g-4 and 300g-5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances including earthquakes, floods, hurricanes, and other natural disasters, as appropriate; and

(6) has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount—

(A) in the case of a system serving a population of more than 10,000, that is not less than \$1,000 per day per violation; and

(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State);

except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation.

#### **(b) Regulations**

(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the deter-

mination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

#### **(c) Interim primary enforcement authority**

A State that has primary enforcement authority under this section with respect to each existing national primary drinking water regulation shall be considered to have primary enforcement authority with respect to each new or revised national primary drinking water regulation during the period beginning on the effective date of a regulation adopted and submitted by the State with respect to the new or revised national primary drinking water regulation in accordance with subsection (b)(1) of this section and ending at such time as the Administrator makes a determination under subsection (b)(2)(B) of this section with respect to the regulation.

(July 1, 1944, ch. 373, title XIV, §1413, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1665; amended Pub. L. 99-339, title I, §101(c)(2), June 19, 1986, 100 Stat. 646; Pub. L. 104-182, title I, §§112, 113(b), Aug. 6, 1996, 110 Stat. 1633, 1635.)

#### AMENDMENTS

1996—Subsec. (a)(1), Pub. L. 104-182, §112(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g-1(a) and 300g-1(b) of this title;"

Subsec. (a)(5), Pub. L. 104-182, §112(b), inserted "including earthquakes, floods, hurricanes, and other natural disasters, as appropriate" after "emergency circumstances".

Subsec. (a)(6), Pub. L. 104-182, §113(b), added par. (6).

Subsec. (c), Pub. L. 104-182, §112(a)(2), added subsec. (c).

1986—Subsec. (a)(1), Pub. L. 99-339 substituted "are no less stringent than the national primary drinking water regulations in effect under sections 300g-1(a) and 300g-1(b) of this title" for subpars. (A) and (B) which related to stringency of State drinking water regulations between period of promulgation and effective date of national interim drinking water regulations and during the period after such effective date.

#### **§ 300g-3. Enforcement of drinking water regulations**

##### **(a) Notice to State and public water system; issuance of administrative order; civil action**

(1)(A) Whenever the Administrator finds during a period during which a State has primary

enforcement responsibility for public water systems (within the meaning of section 300g-2(a) of this title) that any public water system—

(i) for which a variance under section 300g-4 or an exemption under section 300g-5 of this title is not in effect, does not comply with any applicable requirement, or

(ii) for which a variance under section 300g-4 or an exemption under section 300g-5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and such public water system and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time.

(B) If, beyond the thirtieth day after the Administrator's notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such applicable requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) ENFORCEMENT IN NONPRIMACY STATES.—

(A) IN GENERAL.—If, on the basis of information available to the Administrator, the Administrator finds, with respect to a period in which a State does not have primary enforcement responsibility for public water systems, that a public water system in the State—

(i) for which a variance under section 300g-4 of this title or an exemption under section 300g-5 of this title is not in effect, does not comply with any applicable requirement; or

(ii) for which a variance under section 300g-4 of this title or an exemption under section 300g-5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant to the variance or exemption;

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with the requirement, or commence a civil action under subsection (b) of this section.

(B) NOTICE.—If the Administrator takes any action pursuant to this paragraph, the Administrator shall notify an appropriate local elected official, if any, with jurisdiction over the public water system of the action prior to the time that the action is taken.

**(b) Judicial determinations in appropriate Federal district courts; civil penalties, separate violations**

The Administrator may bring a civil action in the appropriate United States district court to require compliance with any applicable requirement, with an order issued under subsection (g) of this section, or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 300g-4 or 300g-5 of this title if—

(1) authorized under paragraph (1) or (2) of subsection (a) of this section, or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgement as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed \$25,000 for each day in which such violation occurs.

**(c) Notice to persons served**

**(1) In general**

Each owner or operator of a public water system shall give notice of each of the following to the persons served by the system:

(A) Notice of any failure on the part of the public water system to—

(i) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation; or

(ii) perform monitoring required by section 300j-4(a) of this title.

(B) If the public water system is subject to a variance granted under subsection (a)(1)(A), (a)(2), or (e) of section 300g-4 of this title for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 300g-5 of this title, notice of—

(i) the existence of the variance or exemption; and

(ii) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

(C) Notice of the concentration level of any unregulated contaminant for which the Administrator has required public notice pursuant to paragraph (2)(E).

**(2) Form, manner, and frequency of notice**

**(A) In general**

The Administrator shall, by regulation, and after consultation with the States, prescribe the manner, frequency, form, and content for giving notice under this subsection. The regulations shall—

(i) provide for different frequencies of notice based on the differences between violations that are intermittent or infrequent and violations that are continuous or frequent; and

(ii) take into account the seriousness of any potential adverse health effects that may be involved.

**(B) State requirements****(i) In general**

A State may, by rule, establish alternative notification requirements—

(I) with respect to the form and content of notice given under and in a manner in accordance with subparagraph (C); and

(II) with respect to the form and content of notice given under subparagraph (D).

**(ii) Contents**

The alternative requirements shall provide the same type and amount of information as required pursuant to this subsection and regulations issued under subparagraph (A).

**(iii) Relationship to section 300g-2**

Nothing in this subparagraph shall be construed or applied to modify the requirements of section 300g-2 of this title.

**(C) Violations with potential to have serious adverse effects on human health**

Regulations issued under subparagraph (A) shall specify notification procedures for each violation by a public water system that has the potential to have serious adverse effects on human health as a result of short-term exposure. Each notice of violation provided under this subparagraph shall—

(i) be distributed as soon as practicable after the occurrence of the violation, but not later than 24 hours after the occurrence of the violation;

(ii) provide a clear and readily understandable explanation of—

(I) the violation;

(II) the potential adverse effects on human health;

(III) the steps that the public water system is taking to correct the violation; and

(IV) the necessity of seeking alternative water supplies until the violation is corrected;

(iii) be provided to the Administrator or the head of the State agency that has primary enforcement responsibility under section 300g-2 of this title as soon as practicable, but not later than 24 hours after the occurrence of the violation; and

(iv) as required by the State agency in general regulations of the State agency, or on a case-by-case basis after the consultation referred to in clause (iii), considering the health risks involved—

(I) be provided to appropriate broadcast media;

(II) be prominently published in a newspaper of general circulation serving the area not later than 1 day after distribution of a notice pursuant to clause (i) or the date of publication of the next issue of the newspaper; or

(III) be provided by posting or door-to-door notification in lieu of notification by means of broadcast media or newspaper.

**(D) Written notice****(i) In general**

Regulations issued under subparagraph (A) shall specify notification procedures for violations other than the violations covered by subparagraph (C). The procedures shall specify that a public water system shall provide written notice to each person served by the system by notice (I) in the first bill (if any) prepared after the date of occurrence of the violation, (II) in an annual report issued not later than 1 year after the date of occurrence of the violation, or (III) by mail or direct delivery as soon as practicable, but not later than 1 year after the date of occurrence of the violation.

**(ii) Form and manner of notice**

The Administrator shall prescribe the form and manner of the notice to provide a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps that the system is taking to seek alternative water supplies, if any, until the violation is corrected.

**(E) Unregulated contaminants**

The Administrator may require the owner or operator of a public water system to give notice to the persons served by the system of the concentration levels of an unregulated contaminant required to be monitored under section 300j-4(a) of this title.

**(3) Reports****(A) Annual report by State****(i) In general**

Not later than January 1, 1998, and annually thereafter, each State that has primary enforcement responsibility under section 300g-2 of this title shall prepare, make readily available to the public, and submit to the Administrator an annual report on violations of national primary drinking water regulations by public water systems in the State, including violations with respect to (I) maximum contaminant levels, (II) treatment requirements, (III) variances and exemptions, and (IV) monitoring requirements determined to be significant by the Administrator after consultation with the States.

**(ii) Distribution**

The State shall publish and distribute summaries of the report and indicate where the full report is available for review.

**(B) Annual report by Administrator**

Not later than July 1, 1998, and annually thereafter, the Administrator shall prepare and make available to the public an annual report summarizing and evaluating reports submitted by States pursuant to subparagraph (A) and notices submitted by public water systems serving Indian Tribes provided to the Administrator pursuant to subparagraph (C) or (D) of paragraph (2) and

making recommendations concerning the resources needed to improve compliance with this subchapter. The report shall include information about public water system compliance on Indian reservations and about enforcement activities undertaken and financial assistance provided by the Administrator on Indian reservations, and shall make specific recommendations concerning the resources needed to improve compliance with this subchapter on Indian reservations.

**(4) Consumer confidence reports by community water systems**

**(A) Annual reports to consumers**

The Administrator, in consultation with public water systems, environmental groups, public interest groups, risk communication experts, and the States, and other interested parties, shall issue regulations within 24 months after August 6, 1996, to require each community water system to mail to each customer of the system at least once annually a report on the level of contaminants in the drinking water purveyed by that system (referred to in this paragraph as a “consumer confidence report”). Such regulations shall provide a brief and plainly worded definition of the terms “maximum contaminant level goal”, “maximum contaminant level”, “variances”, and “exemptions” and brief statements in plain language regarding the health concerns that resulted in regulation of each regulated contaminant. The regulations shall also include a brief and plainly worded explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water. The regulations shall also provide for an Environmental Protection Agency toll-free hotline that consumers can call for more information and explanation.

**(B) Contents of report**

The consumer confidence reports under this paragraph shall include, but not be limited to, each of the following:

(i) Information on the source of the water purveyed.

(ii) A brief and plainly worded definition of the terms “maximum contaminant level goal”, “maximum contaminant level”, “variances”, and “exemptions” as provided in the regulations of the Administrator.

(iii) If any regulated contaminant is detected in the water purveyed by the public water system, a statement setting forth (I) the maximum contaminant level goal, (II) the maximum contaminant level, (III) the level of such contaminant in such water system, and (IV) for any regulated contaminant for which there has been a violation of the maximum contaminant level during the year concerned, the brief statement in plain language regarding the health concerns that resulted in regulation of such contaminant, as provided by the Administrator in regulations under subparagraph (A).

(iv) Information on compliance with national primary drinking water regulations,

as required by the Administrator, and notice if the system is operating under a variance or exemption and the basis on which the variance or exemption was granted.

(v) Information on the levels of unregulated contaminants for which monitoring is required under section 300j-4(a)(2) of this title (including levels of cryptosporidium and radon where States determine they may be found).

(vi) A statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk and that more information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency hotline.

A public water system may include such additional information as it deems appropriate for public education. The Administrator may, for not more than 3 regulated contaminants other than those referred to in subclause (IV) of clause (iii), require a consumer confidence report under this paragraph to include the brief statement in plain language regarding the health concerns that resulted in regulation of the contaminant or contaminants concerned, as provided by the Administrator in regulations under subparagraph (A).

**(C) Coverage**

The Governor of a State may determine not to apply the mailing requirement of subparagraph (A) to a community water system serving fewer than 10,000 persons. Any such system shall—

(i) inform, in the newspaper notice required by clause (iii) or by other means, its customers that the system will not be mailing the report as required by subparagraph (A);

(ii) make the consumer confidence report available upon request to the public; and

(iii) publish the report referred to in subparagraph (A) annually in one or more local newspapers serving the area in which customers of the system are located.

**(D) Alternative to publication**

For any community water system which, pursuant to subparagraph (C), is not required to meet the mailing requirement of subparagraph (A) and which serves 500 persons or fewer, the community water system may elect not to comply with clause (i) or (iii) of subparagraph (C). If the community water system so elects, the system shall, at a minimum—

(i) prepare an annual consumer confidence report pursuant to subparagraph (B); and

(ii) provide notice at least once per year to each of its customers by mail, by door-to-door delivery, by posting or by other means authorized by the regulations of the Administrator that the consumer confidence report is available upon request.

**(E) Alternative form and content**

A State exercising primary enforcement responsibility may establish, by rule, after notice and public comment, alternative requirements with respect to the form and content of consumer confidence reports under this paragraph.

**(d) Notice of noncompliance with secondary drinking water regulations**

Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

**(e) State authority to adopt or enforce laws or regulations respecting drinking water regulations or public water systems unaffected**

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

**(f) Notice and public hearing; availability of recommendations transmitted to State and public water system**

If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1) of this section) 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 from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

**(g) Administrative order requiring compliance; notice and hearing; civil penalty; civil actions**

(1) In any case in which the Administrator is authorized to bring a civil action under this sec-

tion or under section 300j-4 of this title with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.

(2) An order issued under this subsection shall not take effect, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the order. A copy of any order issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than \$25,000 per day of violation.

(B) In a case in which a civil penalty sought by the Administrator under this paragraph does not exceed \$5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a public hearing (unless the person against whom the penalty is assessed requests a hearing on the record in accordance with section 554 of title 5). In a case in which a civil penalty sought by the Administrator under this paragraph exceeds \$5,000, but does not exceed \$25,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.

(C) Whenever any civil penalty sought by the Administrator under this subsection for a violation of an applicable requirement exceeds \$25,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28).

(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

**(h) Consolidation incentive****(1) In general**

An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility under section 300g-2 of this title) or to the Administrator (if the State does not have primary enforcement responsibility) a plan (including specific measures and schedules) for—

(A) the physical consolidation of the system with 1 or more other systems;

(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality.

**(2) Consequences of approval**

If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

**(i) "Applicable requirement" defined**

In this section, the term "applicable requirement" means—

(1) a requirement of section 300g-1, 300g-3, 300g-4, 300g-5, 300g-6<sup>1</sup> 300i-2, 300j, or 300j-4 of this title;

(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 300g-2 of this title have been satisfied, or an applicable State program approved pursuant to this part.

(July 1, 1944, ch. 373, title XIV, §1414, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1666; amended Pub. L. 95-190, §12(b), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 99-339, title I, §§102, 103, June 19, 1986, 100 Stat. 647, 648; Pub. L. 104-182, title I, §§113(a), 114(a), Aug. 6, 1996, 110 Stat. 1634, 1636; Pub. L. 107-188, title IV, §403(1), June 12, 2002, 116 Stat. 687.)

AMENDMENTS

2002—Subsec. (i)(1). Pub. L. 107-188 inserted "300i-2" after "300g-6".

1996—Subsec. (a)(1)(A). Pub. L. 104-182, §113(a)(1)(A)(i)(II), substituted "with the requirement" for "with such regulation or requirement" in concluding provisions.

Subsec. (a)(1)(A)(i). Pub. L. 104-182, §113(a)(1)(A)(i)(I), substituted "any applicable requirement" for "any national primary drinking water regulation in effect under section 300g-1 of this title".

Subsec. (a)(1)(B). Pub. L. 104-182, §113(a)(1)(A)(ii), substituted "such applicable requirement" for "such regulation or requirement".

Subsec. (a)(2). Pub. L. 104-182, §113(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: "Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

"(A) for which a variance under section 300g-4(a)(2) or an exemption under section 300g-5(f) of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g-1 of this title, or

"(B) for which a variance under section 300g-4(a)(2) or an exemption under section 300g-5(f) of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section."

Subsec. (b). Pub. L. 104-182, §113(a)(2), substituted "any applicable requirement" for "a national primary drinking water regulation" in introductory provisions.

Subsec. (c). Pub. L. 104-182, §114(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to notice of owner or operator of public water system to persons served, regulations for form, manner, and frequency of notice, amendment of regulations to provide different types and frequencies of notice, and penalties.

Subsec. (g)(1). Pub. L. 104-182, §113(a)(3)(A), substituted "applicable requirement" for "regulation, schedule, or other requirement" in two places.

Subsec. (g)(2). Pub. L. 104-182, §113(a)(3)(B), substituted "effect, in the case" for "effect until after notice and opportunity for public hearing and, in the case" and "regarding the order" for "regarding the proposed order" and struck out "proposed to be" after "A copy of any order".

Subsec. (g)(3)(B). Pub. L. 104-182, §113(a)(3)(C)(i), added subpar. (B) and struck out former subpar. (B) which read as follows: "Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of \$5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5."

Subsec. (g)(3)(C). Pub. L. 104-182, §113(a)(3)(C)(ii), substituted "subsection for a violation of an applicable requirement exceeds \$25,000" for "paragraph exceeds \$5,000".

Subsecs. (h), (i). Pub. L. 104-182, §113(a)(4), added subsecs. (h) and (i).

1986—Pub. L. 99-339, §102(d)(2), substituted "Enforcement" for "Failure of State to assure enforcement" in section catchline.

Subsec. (a)(1)(A). Pub. L. 99-339, §102(a), inserted "and such public water system" after "notify the State" in provisions following cl. (ii).

Subsec. (a)(1)(B). Pub. L. 99-339, §102(b)(1), amended subpar. (B) generally, substituting provisions which relate to issuance of an order to public water system to comply with regulations, or commencement of civil action if the State has not commenced appropriate enforcement action for provisions which related to public notice of noncompliance and commencement of civil action by Administrator if State failed to take steps to obtain compliance by public water system.

Subsec. (a)(2). Pub. L. 99-339, §102(b)(2), substituted "the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section" for "he may commence a civil action under subsection (b) of this section".

Subsec. (b). Pub. L. 99-339, §102(c), inserted " , with an order issued under subsection (g) of this section," before "or with any schedule" and substituted "there has been a violation" for "there has been a willful violation" and "\$25,000" for "\$5,000".

Subsec. (c). Pub. L. 99-339, §103, substituted provisions relating to amendment of regulations within fifteen months after June 19, 1986, to provide different types and frequencies of notice based on the differences between violations which are intermittent or continuous, manner and content of notices, notice required to public served by owner or operator of public water system, and civil penalty of \$25,000, for provisions relating to form, manner, and frequency of notice based on three month billing period for water bills, notice required to public served by owner or operator of public water system, and civil penalty of \$5,000.

Subsec. (g). Pub. L. 99-339, §102(d), added subsec. (g). 1977—Subsec. (c). Pub. L. 95-190 inserted provisions relating to frequency of required notice, and notice re-

<sup>1</sup> So in original. There probably should be a comma.

specting contaminant levels, and substituted “issued under this subsection” for “thereunder”.

#### § 300g-4. Variances

**(a) Characteristics of raw water sources; specific treatment technique; notice to Administrator, reasons for variance; compliance, enforcement; approval or revision of schedules and revocation of variances; review of variances and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting variances or failing to prescribe schedules; State corrective action; authority of Administrator in a State without primary enforcement responsibility; alternative treatment techniques**

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system. The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe at the the<sup>1</sup> time the variance is granted, a schedule for—

- (i) compliance (including increments of progress) by the public water system with each containment level requirement with respect to which the variance was granted, and
- (ii) implementation by the public water system of such additional control measures as the State may require for each contami-

nant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of the national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State 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. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. 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. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g-3 of this title as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the vari-

<sup>1</sup> So in original.