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primary enforcement responsibility, variances may be granted by the Administrator pursuant to Subpart E of this part.

(1) A State must document all findings that are required under Section 1415(a) of the Act.

(2) If a State prescribes a schedule pursuant to section 1415(a) of the Act requiring compliance with a contaminant level for which the variance is granted later than five years from the date of issuance of the variance the State must—

(i) Document its rationale for the extended compliance schedule;

(ii) Discuss the rationale for the extended compliance schedule in the required public notice and opportunity for public hearing; and

(iii) Provide the shortest practicable time schedule feasible under the circumstances.

(b) States with primary enforcement responsibility may issue exemptions from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1416 of the Act. In States that do not have primary enforcement responsibility, exemptions may be granted by the Administrator pursuant to Subpart F of this part.

(1) A State must document all findings that are required under Section 1416 of the Act:

(i) Before finding that management and restructuring changes cannot be made, a State must consider the following measures, and the availability of State Revolving Loan Fund assistance, or any other Federal or State program, that is reasonably likely to be available within the period of the exemption to implement these measures:

(A) Consideration of rate increases, accounting changes, the appointment of a State-certified operator under the State's Operator Certification program, contractual agreements for joint operation with one or more public water systems;

(B) Activities consistent with the State's Capacity Development Strategy to help the public water system acquire and maintain technical, finan-

cial, and managerial capacity to come into compliance with the Act; and

(C) Ownership changes, physical consolidation with another public water system, or other feasible and appropriate means of consolidation which would result in compliance with the Act;

(ii) The State must consider the availability of an alternative source of water, including the feasibility of partnerships with neighboring public water systems, as identified by the public water system or by the State consistent with the Capacity Development Strategy.

(2) In the case of a public water system serving a population of not more than 3,300 persons and which needs financial assistance for the necessary improvements under the initial compliance schedule, an exemption granted by the State under section 1416(b)(2)(B)(i) or (ii) of the Act may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 additional years, only if the State establishes that the public water system is taking all practicable steps to meet the requirements of Section 1416(b)(2)(B) of the Act and the established compliance schedule to achieve full compliance with the contaminant level or treatment technique for which the exemption was granted. A State must document its findings in granting an extension under this paragraph.

[63 FR 43847, Aug. 14, 1998]

§ 142.21 State consideration of a variance or exemption request.

A State with primary enforcement responsibility shall act on any variance or exemption request submitted to it, within 90 days of receipt of the request.

§ 142.22 Review of State variances, exemptions and schedules.

(a) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances and exemptions granted (and schedules prescribed pursuant thereto) by the States

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with primary enforcement responsibility during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this title, but at least one review shall be completed within each 3-year period following the completion of the first review under this paragraph.

(b) Notice of a proposed review shall be published in the FEDERAL REGISTER. Such notice shall (1) provide information respecting the location of data and other information respecting the variances and exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such variances and exemptions), and (2) advise of the opportunity to submit comments on the variances and exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the FEDERAL REGISTER the results of his review, together with findings responsive to any comments submitted in connection with such review.

§ 142.23 Notice to State.

(a) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances or exemptions under section 1415(a) or section 1416(a) of the Act or failed to prescribe schedules in accordance with section 1415(a) or section 1416(b) of the Act, he shall notify the State of his findings. Such notice shall:

(1) Identify each public water system for which the finding was made;

(2) Specify the reasons for the finding; and

(3) As appropriate, propose revocation of specific variances or exemptions, or propose revised schedules for specific public water systems.

(b) The Administrator shall also notify the State of a public hearing to be held on the provisions of the notice required by paragraph (a) of this section. Such notice shall specify the time and location for the hearing. If, upon notification of a finding by the Administrator, the State takes adequate corrective action, the Administrator shall

rescind his notice to the State of a public hearing, provided that the Administrator is notified of the corrective action prior to the hearing.

(c) The Administrator shall publish notice of the public hearing in the FEDERAL REGISTER and in a newspaper or newspapers of general circulation in the involved State including a summary of the findings made pursuant to paragraph (a) of this section, a statement of 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.

(d) Hearings convened pursuant to paragraphs (b) and (c) 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 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.

(e) Within 180 days after the date notice is given pursuant to paragraph (b) of this section, the Administrator shall:

(1) Rescind the finding for which the notice was given and promptly notify the State of such rescission, or

(2) Promulgate with any modifications as appropriate such revocation and revised schedules proposed in such notice and promptly notify the State of such action.

(f) A revocation or revised schedule shall take effect 90 days after the State is notified under paragraph (e)(2) of this section.

§ 142.24 Administrator's rescission.

If, upon notification of a finding by the Administrator under § 142.23, the State takes adequate corrective action before the effective date of the revocation or revised schedule, the Administrator shall rescind the application of his finding to that variance, exemption or schedule.