

(B) Affordability criteria

Not later than 18 months after August 6, 1996, the Administrator, in consultation with the States and the Rural Utilities Service of the Department of Agriculture, shall publish information to assist the States in developing affordability criteria. The affordability criteria shall be reviewed by the States not less often than every 5 years to determine if changes are needed to the criteria.

(8) Review by the Administrator**(A) In general**

The Administrator shall periodically review the program of each State that has primary enforcement responsibility for public water systems under section 300g-2 of this title with respect to variances to determine whether the variances granted by the State comply with the requirements of this subsection. With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State.

(B) Notice and publication

If the Administrator determines that variances granted by a State are not in compliance with affordability criteria developed by the State and the requirements of this subsection, the Administrator shall notify the State in writing of the deficiencies and make public the determination.

(9) Approval of variances

A State proposing to grant a variance under this subsection to a public water system serving more than 3,300 and fewer than 10,000 persons shall submit the variance to the Administrator for review and approval prior to the issuance of the variance. The Administrator shall approve the variance if it meets each of the requirements of this subsection. The Administrator shall approve or disapprove the variance within 90 days. If the Administrator disapproves a variance under this paragraph, the Administrator shall notify the State in writing of the reasons for disapproval and the variance may be resubmitted with modifications to address the objections stated by the Administrator.

(10) Objections to variances**(A) By the Administrator**

The Administrator may review and object to any variance proposed to be granted by a State, if the objection is communicated to the State not later than 90 days after the State proposes to grant the variance. If the Administrator objects to the granting of a variance, the Administrator shall notify the State in writing of each basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the

variance if the Administrator determines that the State decision does not comply with this subsection.

(B) Petition by consumers

Not later than 30 days after a State exercising primary enforcement responsibility for public water systems under section 300g-2 of this title proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance. The Administrator shall respond to the petition and determine whether to object to the variance under subparagraph (A) not later than 60 days after the receipt of the petition.

(C) Timing

No variance shall be granted by a State until the later of the following:

- (i) 90 days after the State proposes to grant a variance.
- (ii) If the Administrator objects to the variance, the date on which the State makes the recommended modifications or responds in writing to each objection.

(July 1, 1944, ch. 373, title XIV, §1415, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1669; amended Pub. L. 99-339, title I, §104, June 19, 1986, 100 Stat. 649; Pub. L. 104-182, title I, §§102(c)(1), 115, 116, title V, §501(a)(3), Aug. 6, 1996, 110 Stat. 1621, 1641, 1691.)

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104-182, §501(a)(3), inserted “the” before “time the variance is granted,” in introductory provisions.

Pub. L. 104-182, §115, in second sentence, substituted “be issued to a system on condition that the system install” for “only be issued to a system after the system’s application of” and inserted “, and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system” after “(taking costs into consideration)”.

Subsec. (d). Pub. L. 104-182, §102(c)(1), substituted “section 300g-1(b)” for “section 300g-1(b)(3)”.

Subsec. (e). Pub. L. 104-182, §116, added subsec. (e).

1986—Subsec. (a)(1)(A). Pub. L. 99-339, §104(1)-(3), substituted “such drinking water regulation. A variance may only be issued to a system after the system’s application” for “such drinking water regulation despite application”, struck out “generally” after “finds are”, inserted provisions relating to proposal and promulgation by Administrator of a finding on best available technology, treatment techniques or other means available for each contaminant at time of proposal and promulgation of maximum contaminant levels, and substituted “at the time” for “within one year of the date”.

Subsec. (a)(1)(A)(ii). Pub. L. 99-339, §104(4), substituted “water system of such additional control” for “water system of such control”.

§ 300g-5. Exemptions**(a) Requisite findings**

A State which has primary enforcement responsibility may exempt any public water system within the State’s jurisdiction from any requirement respecting 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 300j-12(d) of this title), 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 system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system,

(3) the granting of the exemption will not result in an unreasonable risk to health;¹ and

(4) management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this subchapter or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1) If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, at the time the exemption is granted, a schedule for—

(A) compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection 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.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than 3 years after the otherwise applicable compliance date established in section 300g-1(b)(10) of this title.

(B) No exemption shall be granted unless the public water system establishes that—

(i) the system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to section 300g-1(b)(10) of this title;

(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to section 300j-12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption; or

(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and

the system is taking all practicable steps to meet the standard.

(C) In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or (ii) of subparagraph (B) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).

(D) LIMITATION.—A public water system may not receive an exemption under this section if the system was granted a variance under section 300g-4(e) of this title.

(3) Each public water system's exemption granted by a State under subsection (a) of this section shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section 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.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) of this section or the schedule is revised by the Administrator under such subsection.

(c) Notice to Administrator; reasons for exemption

Each State which grants an exemption under subsection (a) of this section shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) of this section before the exemption may be granted) and document the need for the exemption.

(d) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules; State corrective action

(1) Not later than 18 months after the effective date of the interim national primary drinking

¹ So in original. The semicolon probably should be a comma.

water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States 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 subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the 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 comments submitted in connection with such review.

(2)(A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) of this section or failed to prescribe schedules in accordance with subsection (b) of this section, the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—

- (i) identify each exempt public water system with respect to which the finding was made,
- (ii) specify the reasons for the finding, and
- (iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes correc-

tive action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall rescind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) "Treatment technique requirement" defined

For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g-1(b) of this title.

(f) Authority of Administrator in a State without primary enforcement responsibility

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) Applications for exemptions; regulations; reasonable time for acting

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(July 1, 1944, ch. 373, title XIV, §1416, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1672; amended Pub. L. 95-190, §10(a), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 96-502, §§1, 4(b), Dec. 5, 1980, 94 Stat. 2737, 2738; Pub. L. 99-339, title I, §§101(c)(4), 105, June 19, 1986, 100 Stat. 646, 649; Pub. L. 104-182, title I, §117(a), Aug. 6, 1996, 110 Stat. 1644.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-182, §117(a)(1), inserted "including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j-12(d) of this title" after "(which may include economic factors)" and "or to implement measures to develop an alternative source of water supply," after "treatment technique requirement,".

Subsec. (a)(4). Pub. L. 104-182, §117(a)(2), added par. (4).

Subsec. (b)(1)(A). Pub. L. 104-182, §117(a)(3), substituted "(including increments of progress or measures to develop an alternative source of water supply)" for "(including increments of progress)" and "requirement or treatment" for "requirement and treatment".

Subsec. (b)(2)(A). Pub. L. 104-182, §117(a)(4)(A), substituted "not later than 3 years after the otherwise applicable compliance date established in section 300g-1(b)(10) of this title." for "(except as provided in subparagraph (B))—"

“(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under section 300g-1(a) of this title, not later than 12 months after June 19, 1986; and

“(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by national primary drinking water regulations, other than a regulation referred to in section 300g-1(a) of this title, 12 months after the date of the issuance of the exemption.”

Subsec. (b)(2)(B). Pub. L. 104-182, §117(a)(4)(A), substituted “No exemption shall be granted unless” for “The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if” in introductory provisions.

Subsec. (b)(2)(B)(i). Pub. L. 104-182, §117(a)(4)(B), substituted “prior to the date established pursuant to section 300g-1(b)(10) of this title” for “within the period of such exemption”.

Subsec. (b)(2)(B)(ii). Pub. L. 104-182, §117(a)(4)(C), inserted “or assistance pursuant to section 300j-12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption” after “such financial assistance”.

Subsec. (b)(2)(C). Pub. L. 104-182, §117(a)(4)(D), substituted “a population of 3,300” for “500 service connections” and inserted “, but not to exceed a total of 6 years,” after “for one or more additional 2-year periods”.

Subsec. (b)(2)(D). Pub. L. 104-182, §117(a)(4)(E), added subpar. (D).

1986—Subsec. (b)(1). Pub. L. 99-339, §105(a)(1), substituted “at the time” for “within one year of the date”.

Subsec. (b)(2)(A)(i). Pub. L. 99-339, §105(a)(2), struck out “interim” before “national primary” and substituted “not later than 12 months after June 19, 1986” for “not later than January 1, 1984”.

Subsec. (b)(2)(A)(ii). Pub. L. 99-339, §105(a)(3), struck out “revised” before “national primary” and substituted “other than a regulation referred to in section 300g-1(a) of this title, 12 months after the date of the issuance of the exemption” for “not later than seven years after the date such requirement takes effect”.

Subsec. (b)(2)(B). Pub. L. 99-339, §105(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

“(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1986; and

“(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.”

Subsec. (b)(2)(C). Pub. L. 99-339, §105(a)(4), added subpar. (C).

Subsec. (e). Pub. L. 99-339, §101(c)(4), substituted “300g-1(b)” for “300g-1(b)(3)”.

1980—Subsec. (a)(2). Pub. L. 96-502, §4(b), substituted “treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system, and” for “treatment technique requirement, and”.

Subsec. (b)(2)(A)(i). Pub. L. 96-502, §1, substituted “January 1, 1984” for “January 1, 1981”.

Subsec. (b)(2)(B)(i). Pub. L. 96-502, §1, substituted “January 1, 1986” for “January 1, 1983”.

1977—Subsec. (b)(1). Pub. L. 95-190 substituted “contaminant” for “containment” wherever appearing.

§ 300g-6. Prohibition on use of lead pipes, solder, and flux

(a) In general

(1) Prohibitions

(A) In general

No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 19, 1986, in the installation or repair of—

(i) any public water system; or

(ii) any plumbing in a residential or non-residential facility providing water for human consumption,

that is not lead free (within the meaning of subsection (d) of this section).

(B) Leaded joints

Subparagraph (A) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Public notice requirements

(A) In general

Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

(B) Contents of notice

Notice under this paragraph shall provide a clear and readily understandable explanation of—

(i) the potential sources of lead in the drinking water,

(ii) potential adverse health effects,

(iii) reasonably available methods of mitigating known or potential lead content in drinking water,

(iv) any steps the system is taking to mitigate lead content in drinking water, and

(v) the necessity for seeking alternative water supplies, if any.

(3) Unlawful acts

Effective 2 years after August 6, 1996, it shall be unlawful—

(A) for any person to introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except