

3. The granting of the exemption will not result in an unreasonable risk to health.

(b) An exemption pursuant to this subchapter shall be granted only under conditions and in a manner which are no less stringent than those under which an exemption may be granted under the Federal Act.

(c) A supplier of water seeking an exemption pursuant to this subchapter shall submit a request in writing to the Department that includes the following information:

1. The nature and duration of exemption requested;
2. Relevant analytical results of water quality sampling of the system, including results of tests conducted pursuant to the requirements of this chapter;
3. Explanation of the compelling factors, such as time or economic factors, which prevent the supplier of water from achieving compliance;
4. A proposed compliance schedule, including the date when each step toward compliance will be achieved; and
5. Any other information believed to be pertinent by the requester.

(d) The Department shall act on any exemption request within 90 days of receipt of a request with complete information required pursuant to (c) above. In determining whether to grant an exemption, the Department will consider the following factors:

1. The need for construction, installation or modification of treatment equipment or systems;
2. The time needed to put into operation a new treatment facility to replace an existing system which is not in compliance with the applicable MCL or treatment technique; and
3. The economic feasibility of compliance with the applicable MCL or treatment technique.

7:10-6.3 Disposition of variance or exemption request

(a) If the Department intends to deny a request for an exemption or variance submitted pursuant to N.J.A.C. 7:10-6.1 or 6.2, the Department shall so notify the applicant in writing and state the reason or reasons for the proposed denial. Such notice shall offer the requester the opportunity to present, within 30 days of receipt of the notice, additional information or argument to the Department. The Department shall make its final determination on the request within 30 days of receipt of such additional information or argument. If no additional information is presented by the requester within the required time, the Department will thereafter deny the request.

(b) If the Department grants a variance or exemption, after satisfaction of the applicable public notice and hearing requirements pursuant to (c) and (d) below, the Department shall notify the applicant by written order. Such order shall identify the variance or exemption, the facility covered, and the termination date. The order shall also contain the terms and conditions deemed appropriate, including interim

control measures, requirements for monitoring, sampling, recordkeeping and reporting and any proposed compliance schedule.

1. The order granting a variance or an exemption from a maximum contaminant level pursuant to this subchapter shall provide that the variance or exemption will be terminated when the system comes into compliance with the applicable maximum contaminant level. The order shall also provide that the variance or exemption may be terminated by the Department upon a finding that the supplier of water has failed to comply with any requirements of a final schedule made applicable to the system pursuant to this section.

2. The order granting a variance from a specified treatment technique pursuant to this subchapter shall provide that the variance may be terminated by the Department at any time upon a finding that the nature of the raw water source is such that the specified treatment technique for which the variance was granted is necessary to protect the health of persons, or upon a finding that the supplier of water has failed to comply with monitoring and other requirements prescribed by the Department as conditions to the granting of the variance.

(c) Prior to issuing an order granting a variance or setting a compliance schedule for a variance or exemption, the Department shall provide public notice of its intent to grant the variance or set the compliance schedule, and shall provide an opportunity for any interested person to request a public hearing on the proposed variance or compliance schedule. Such notice may cover the granting of more than one variance or compliance schedule, if each is identified with specificity.

1. The public notice of opportunity for a public hearing on the proposed variance or compliance schedule for a variance or exemption shall:

- i. Be published in the New Jersey Register;
- ii. Be published in a newspaper of general circulation in the area served by the public water system.
- iii. Include a summary of the proposed variance or exemption compliance schedule; and
- iv. Include a statement that interested parties may request, in writing, a public hearing within 30 days after publication of the public notice. The notice shall state the address to which such request should be sent, and a statement that such request for a public hearing must include the name, address, and telephone number of the person or organization making the request, a short statement of the requester's interest in the matter and the information he or she intends to produce at the public hearing, and the requester's signature.

(d) The Department shall grant a request for a public hearing on a variance or compliance schedule for a variance or exemption when it determines, after reviewing the information presented in the request submitted pursuant to (c) above, that there is a reasonable likelihood of useful information being produced at a hearing.

1. If the Department grants a request for a public hearing on a proposed variance or compliance schedule, the Department shall give the public, the requester and the affected public water system notice of the hearing not less than 15 days prior to the scheduled date of the hearing. The Department shall publish notice of the public hearing in the same manner as it published the notice of the proposed variance or compliance schedule pursuant to (c) above.

2. A representative of the Department shall conduct the public hearing on the proposed variance or compliance schedule in an informal, orderly and expeditious manner and shall submit a report of the public hearing to the Commissioner or his or her designee for final determination.

(e) Within 30 days after a public hearing held pursuant to (d) above on a proposed variance or schedule of compliance for a variance or exemption, the Commissioner or his or her designee shall confirm, rescind or revise the proposed schedule as necessary and prescribe the final schedule of compliance which shall include:

1. Dates for attainment of each step toward compliance;
2. Where applicable, dates by which arrangement for an alternative raw water source or improvement to an existing source will be completed;
3. Dates of connection to an alternative raw water source;
4. Date by which final compliance is to be achieved; and
5. Description of control measures, including interim control measures, for each contaminant for which the variance or exemption is granted.

(f) If no public hearing is held pursuant to (d) above, a variance or exemption schedule of compliance for a variance or exemption proposed pursuant to (c) above shall become effective 30 days after the notice of opportunity for hearing was published pursuant to (c) above.

(g) An exemption shall become effective upon receipt by the supplier of water of the order granting the exemption pursuant to (b) above.

(h) The Department shall promptly notify the Administrator of all variances and exemptions granted. Such notification shall describe the reason(s) for the variance or exemption, state the bases for the findings the Department made in granting the variance or exemption, and document the need for the variance or exemption.

(i) If a supplier of water fails to meet a final schedule of compliance date, or fails to comply with any other condition of the variance or exemption issued pursuant to this section, the Department may terminate the variance or exemption and may seek applicable penalties pursuant to the State Act and N.J.A.C. 7:10-3.

7:10-6.4 Renewal of variances and exemptions

(a) The Department shall specify the duration of a variance or exemption in the order granting the variance or exemption issued pursuant to N.J.A.C. 7:10-6.3. The maximum duration of a variance is three years, including any renewal or renewals. Systems with fewer than 500 service connections may request a maximum of two consecutive two-year renewals.

(b) A supplier of water seeking to renew a variance or exemption shall submit a renewal request in writing at least six months prior to the expiration of the variance or exemption.

(c) The request for and disposition of a request for the renewal of a variance or exemption shall be made in accordance with procedures set forth at N.J.A.C. 7:10-6.1, 6.2 and 6.3.

7:10-6.5 Requests for adjudicatory hearings

(a) A requester for a variance or exemption under N.J.A.C. 7:10-6.1 and 6.2, or any person subject to the limitation on third party appeal rights set forth in P.L. 1993, c.359 (N.J.S.A. 52:4B-3.1 through 3.3), who believes himself or herself to be aggrieved with respect to decisions made by the Department pursuant to this subchapter may contest the decision and request an adjudicatory hearing pursuant to Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, in accordance with the appeal procedures set forth at N.J.A.C. 7:10-3.5.

SUBCHAPTER 7. STATE SECONDARY DRINKING WATER REGULATIONS

7:10-7.1 Authority, purpose and scope

This subchapter contains the Department's secondary drinking water regulations, promulgated pursuant to the State Act. These regulations apply to any contaminant in drinking water which may adversely affect the taste, odor, or appearance of such water, or which may otherwise adversely affect the public welfare. This subchapter specifies the upper limits or optimum ranges of contaminants in drinking water required to be met by any water system when the Department or the administrative authority having jurisdiction over the water system finds a need therefor. The optimum range or the upper limit for any contaminant in drinking water as specified in this subchapter is the recommended level for such a contaminant as delivered to the free-flowing outlet of the ultimate user of a public or nonpublic water system. These standards shall be met whenever a new source of water supply is constructed or added to a water system. For existing water systems, the Department may require treatment(s) to meet these standards, if the exceedance of one or more of these standards causes adverse effects on the consumers of such systems.