letters was accompanied by a petition with 189 signatures of individuals recommending the NPS designate Honokohau beach as clothing optional. This response persuaded the park to move forward with comment rulemaking.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review these comments, as well as the comments received from the previous public meetings concerning the future use of Honokohau beach, and consider making changes to the rule based upon an analysis of the comments.

Drafting Information

The principal authors of this proposed rulemaking are James Martin, Superintendent, Hawaii Volcanoes National Park; Bryan Harry, Superintendent, National Park Service, Pacific Island Support Office; Laura Carter-Schuster, Resource Manager, Kaloko-Honokohau National Historical Park; and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This rulemaking does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The economic effects of this rulemaking are local in nature and negligible in scope.

The Service has determined and certifies pursuant to the Unfounded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) Conflict with adjacent ownership or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared specifically for this regulation. However, an EIS was issued in 1992 along with the General Management Plan for the management and development of Kaloko-Honokohau National Historical Park under the provisions of NEPA.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721(1981).

2. New Section 7.87 is added to read as follows:

§ 7.87 Kaloko-Honokohau National Historical Park.

Public nudity, including public nude bathing, by any person on Federal land or water within the boundaries of Kaloko-Honokohau National Historical Park is prohibited. Public nudity is a person's failure to cover with a fully opaque covering that person's own genitals, pubic areas, rectal area or female breast below a point immediately above the top of the areola when in a public place. Public place is any area of Federal land or water within the Historical Park, except the enclosed portions of restrooms or other structures designed for privacy or similar purposes. This section shall not apply to a person under 10 years of age.

Dated: January 30, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–10322 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[FRL–5999–5]

RIN 2020–AA37

Revision of Existing Variance and Exemption Regulations to Comply With Requirements of the Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Agency is proposing to revise the existing regulations regarding Safe Drinking Water Act variances and exemptions. These revisions are based on the 1996 Safe Drinking Water Act Amendments. A new subpart, Subpart K, created to implement a new section in the Amendments, describes procedures and conditions under which a primacy State/Tribe (please note that throughout this preamble and proposed rule, the term ''State'' has the same definition as currently exists in 40 CFR 141.2, i.e., ''State means the agency of the State or Tribal government which has jurisdiction over public water systems . . .'') or the Administrator may issue small system variances to public water systems serving less than 10,000 persons. This rule-making is intended to provide regulatory relief to all public water systems, particularly small systems.

DATES: Written comments must be received by midnight May 20, 1998.

ADDRESSES: Written comments should be submitted to: W–97–26 Comment Clerk, Water Docket (mailcode MC4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

The record is available for inspection at the Water Docket, Washington, D.C., from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202)–260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Andrew J. Hudock, Office of

Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Water Enforcement Division (Mailcode: 2243–A), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460. Phone: (202)–564–6032.

SUPPLEMENTARY INFORMATION:

Table of Contents

Regulated Persons

Potentially regulated persons are public water systems (PWSs).

Category	Example of regulated entities
Industry	May include privately-owned utilities, ancillary water systems, homeowner's associations, mobile home parks, Municipalities; County Governments; Water districts; Water and Sewer Authorities.
State/Local/Tribal governments	May include publicly-owned PWS's, municipalities, county governments, water districts, State drinking water programs.
Federal government	Federally-owned facilities.

This table is not intended to be exhaustive, but rather it provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that the Agency is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section **FOR FURTHER INFORMATION CONTACT**.

I. Statutory Authority

Sections 115–117 of the Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182), enacted August 6, 1996, amended sections 1415 and 1416 of the Act (42 U.S.C. 300g–4, 300g–5) concerning variances and exemptions.

A. Overview

As provided under the Act, under certain conditions, variances are available to public water systems that cannot (due to source water quality, or, in the case of small systems, affordability) comply with the national primary drinking water standards. Variances generally allow a system to comply with less stringent, but still protective, standards based on a specified technology available to the system. The duration of the variance generally coincides with the life of the technology. An exemption, on the other hand, is intended to allow a system with compelling circumstances an extension of time before the system must comply with applicable Safe Drinking Water Act requirements. An exemption is limited to three years after the otherwise applicable compliance date (although extensions up to a total of six additional years may be available to small systems under certain conditions).

B. New Small System Variances

Section 1415(e) establishes new provisions by which a small public water system may obtain a variance from complying with National Primary Drinking Water Regulations (NPDWR) under certain specified conditions. Section 1415(e)(1) identifies, through service population, the size of systems which may seek such small system variances. Specifically, this section limits such small system variances to public water systems serving 3,300 or fewer persons, and, with the approval of the Administrator, to public water systems serving more than 3,300 persons but less than 10,000 persons.

Section 1415(e)(6) states that such small system variances are not available for (1) any maximum contaminant level (MCL) or treatment techniques for a contaminant for which a NPDWR was promulgated prior to January 1, 1986, or (2) a NPDWR for a microbial contaminant or an indicator or treatment technique for a microbial contaminant.

Sections 1415(e)(2) and (3) identify the conditions under which small systems may receive such a variance. Section 1415(e)(2)(A) states that one such condition is that a variance technology which has been identified by the Administrator under section 1412(b)(15) is applicable to the size and source water quality conditions of the public water system. In addition, under section 1415(e)(2)(B), the system is required to install, operate, and maintain such treatment technology, treatment technique, or other means, in accordance with guidance or regulations issued by the Administrator. Section 1415(e)(2)(C) indicates that the small system variance is also contingent upon whether a State/Tribe exercising primary enforcement responsibility (or the Agency, where a State/Tribe does not have primacy) determines that certain conditions are met, namely that (1) the system cannot afford, in accordance with State/Tribal (or EPA) affordability criteria, to comply through

treatment, alternative sources of water supplies, or restructuring and consolidation, and (2) the variance will ensure adequate protection of human health (section 1415(e)(3)).

Section 1415(e)(4) describes the maximum length of schedules to comply with the conditions of such variances (three years), and possible additional time (two additional years) to achieve compliance with the variance, under certain conditions.

Section 1415(e)(5) requires the Administrator or primacy State/Tribe to review each variance not less than every five years after the compliance date established in the variance to ensure that the system remains eligible for the variance and is conforming to each condition of the variance.

Section 1415(e)(7)(A) requires the Administrator to promulgate, within two years of enactment, regulations for variances to be granted under the newly established program. These regulations must specify, at a minimum, procedures to grant and deny variances, including public participation requirements, requirements for proper installation and maintenance of approved variance technology and sufficient financial and technical capability to operate such treatment, eligibility requirements for a variance for each NPDWR, and information requirements for variance applications. Section 1415(e)(7)(B) requires the Administrator to publish information by February 6, 1998, to assist primacy States/Tribes in developing affordability criteria and requires State/Tribal review of such criteria not less than every five years.

Section 1415(e)(8)(A) requires the Administrator to periodically review the primacy State's/Tribe's variance program to determine whether variances granted by the State/Tribe comply with the requirements of the Act. If the Administrator determines that the variances granted by the primacy State/Tribe are not in compliance with the State's/Tribe's affordability criteria and the requirements of the Act, section 1415(e)(8)(B) requires the Administrator to notify the State in writing of the deficiencies and to make public the determination.

Section 1415(e)(9) requires a primacy State/Tribe, which is proposing to grant a small system variance to a public water system serving more than 3,300 and fewer than 10,000 persons, to submit that variance to the Administrator for review and approval prior to issuance. The Administrator is required to approve or disapprove the variance within 90 days. If the Administrator disapproves of the variance, the Administrator is required to notify the State in writing of the reasons for such disapproval. The State may then revise and resubmit the modified variance for approval by the Administrator.

Section 1415(e)(10) addresses objections to small system variances. Section 1415(e)(10)(A) states that the Administrator may review and object to any variance proposed to be granted by the State/Tribe, if such objection is communicated to the State/Tribe not later than 90 days after the State/Tribe proposes to grant the variance. Such objections must be communicated in writing, identifying both the basis for the objection and proposed modifications. The State/Tribe shall then make the recommended modifications or respond in writing to each objection. If the State/Tribe proceeds to issue the variance without resolving the Administrator's concerns, the Administrator may overturn the State/Tribal decision to grant the variance if the State/Tribal decision does not comply with the Act or regulations.

Section 1415(e)(10)(B) addresses objections based on petitions to the Administrator by consumers. Under this section, not later than 30 days after a primacy State/Tribe proposes to grant a small system variance, any person served by the public water system may petition the Administrator to object to the granting of the variance. The Administrator is required to respond to the petition and determine whether to object to the variance not later than 60 days after the receipt of the petition.

Also regarding objections to small system variances, section 1415(e)(10)(C) states that no variance shall be granted by a State/Tribe until the later of the following: (1) 90 days after the State/Tribe proposes to grant a variance, or (2) following the Administrator's objection to a variance, the date on which the State/Tribe makes the recommended modifications or responds in writing to each objection.

C. General Variances

In the 1996 Amendments to the SDWA, Congress modified the language governing general variances (i.e., those variances available to systems of any size). Under the newly enacted section 1415(a)(1)(A), a variance may be granted on the condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available. This new modification changes the previous requirement that mandated that the system install variance technologies before a variance could be issued. In the new Amendments, before a variance can be issued, Congress also requires primacy States/Tribes to conduct an evaluation that satisfies the State/Tribe that alternative sources of water are not reasonably available to a system.

D. Exemptions

In a major change in the exemption provisions of the SDWA, section 1416(b)(2)(A) deleted provisions which limited an exemption to 12 months, subject to a three-year extension. The new provisions require the schedule for an exemption to require compliance with each contaminant level and treatment technique for which the exemption was granted as soon as practicable but not later than three years after the otherwise applicable compliance date established in section 1412(b)(10).

The only exception to this exemption time period is in section 1416(b)(2)(C) for small systems serving less than 3,300 persons, under certain specified conditions, for which extensions may be renewed for one or more additional two-year periods, but not to exceed a total of six years.

The Amendments also modified section 1416 of the Act to specify a wider set of factors that need to be considered before an exemption is granted from the requirements of the NPDWR. Prior to the 1996 amendments, section 1416 authorized a State that has primary enforcement responsibility under the SDWA (or EPA where the State/Tribe does not have such primacy) to exempt a public water system from the NPDWR if (1) the system could not comply with the regulation and (2) no unreasonable risk to public health would result from the exemption. Section 1416(a) now requires the State/Tribe, in determining whether an exemption may be granted, to also consider whether the public water system is a ''disadvantaged community'' and whether management or restructuring changes can be made that will result in compliance or, if compliance cannot be achieved, would improve the quality of the drinking water. Section 1416(a)(4) also requires a State/Tribe to consider measures to develop an alternative source of water supply. Section 1416(b)(2)(D) states that a small system that has received a variance under section 1415(e) cannot receive an exemption under section 1416.

II. Consultation with Public Water Systems, State, Tribal and Local Governments, Environmental Groups, and Public Interest Groups

As required under section 1415 of the SDWA, as amended, the Agency has

consulted with State representatives, as well as a broad range of other interested parties, in the development of this proposed rule.

On September 16, 1997, early in the regulatory development process, EPA held its first stakeholders meeting in Washington, D.C., to discuss the amendments as they apply to Safe Drinking Water Act variances and exemptions. Participants in this day-long meeting included industry representatives, State representatives, and representatives of environmental groups. This meeting was designed specifically to solicit views and ideas from a number of interested stakeholders at a very early stage in the process, prior to development of internal drafts. A summary of this meeting was subsequently provided to attendees, as well as to interested persons who were unable to attend.

On September 17, 1997, as a follow-up to the previous day's meeting, the Agency met with a representative of the Association of State Drinking Water Administrators (ASDWA) and a State representative to discuss implementation of the 1996 variances and exemptions provisions. The stakeholders provided early comments on possible procedures to obtain a small system variance, including at what point in the process the public water system or the State should notify the public.

On September 30, 1997, in conjunction with the National Rural Water Association national conference in Indianapolis, Indiana, the Agency met with community water system operators and industry representatives to further discuss revisions to the variances and exemptions regulations. Discussion during this meeting focused primarily on (1) the extent to which public water systems should be expected to assemble information when applying for a variance, (2) public notification associated with the variance, and (3) required terms and conditions of small system variances.

On October 20, 1997, in conjunction with the ASDWA national meeting in Savannah, GA, the Agency presented a summary of the draft variance and exemption regulations. At that time, all States were given the opportunity to participate in a discussion regarding the content of the regulations.

On October 24, 1997, the Agency met with representatives of environmental and consumer groups to discuss their perspective on possible revisions to the variances and exemptions regulations. Discussion during this meeting focused primarily on public participation and notification concerns, variance eligibility, and criteria for reviewing and granting small system variances.

Although the Agency has not consulted directly with representatives of Tribal governments in the development of this proposal, the Agency will make efforts to do so, as appropriate, during the comment period. The rule being proposed today has been developed in consultation with, and takes into consideration suggestions from, public water systems, environmental groups, public interest groups, the States, and other interested parties.

III. Discussion of Proposed Rule

A. Purpose and Applicability

Through this proposed rulemaking, the Agency seeks to codify the 1996 SDWA amendments addressing general variances and exemptions provisions, as well as providing a new subpart which addresses the procedures for issuance of small system variances. This proposed rule will be applicable to all eligible public water systems and primacy agencies (States, Tribes, and the Agency).

B. Effective Date

The effective date of this rule will be one month after promulgation.

C. Primacy Requirements

Primacy States/Tribes, if they choose to issue variances and exemptions, are required under section 1413(a)(4) of the Safe Drinking Water Act to issue such variances and exemptions under conditions and in a manner which is not less stringent than the variance and exemption provisions of the Act. In addition, section 1415(e)(7)(A) of the Safe Drinking Water Act requires the Administrator to promulgate regulations that shall, among other things, specify procedures to be used by the Administrator or the State to grant or deny variances. This statutory language suggests that it was the intent of Congress that States adopt procedures no less stringent than those identified in this proposed rule for issuance of small system variances. Therefore, the Agency is proposing to change § 142.10(d) of the regulations accordingly. Thus, if a primacy State wishes to issue small system variances, it must first enact State regulations which are no less stringent than the requirements in section 1415(e) of the Act and as embodied in this proposed rule, and seek EPA approval of such regulations by submitting a program revision package.

D. Rationale for New Subpart

This proposed rule creates Subpart K, which addresses the issuance of small system variances. This separate subpart was created to reflect the rather substantial statutory language in section 1415(e) of the Act, which establishes new provisions by which a small public water system may obtain a variance from complying with National Primary Drinking Water Regulations (NPDWR) under certain specified conditions. The Agency's decision to establish this separate subpart in the regulations is intended to provide clear and concise descriptions of the new regulatory requirements for small public water systems in one location in the regulations. The alternative of interspersing small system variance requirements within the existing regulations for variances could easily become too confusing when trying to identify and follow small system requirements.

E. Rationale for Format of New Subpart

The Agency has attempted to draft Subpart K of these proposed regulations in a question-and-answer format in ''plain English'', in accordance with current Agency policy for regulation development. The intent of ''plain English'' is to produce rules which are clear, concise, straight-forward, understandable, and enforceable, without extensive ''legalese''. This effort to use ''plain English'' is not just a Federal initiative; over half of the States now have legislative drafting manuals recommending plain English principles.

F. General Provisions in Proposed Subpart K

Sections 142.301–142.305 of the proposed small system variance regulations essentially codify the statutory provisions governing who can apply for, and who can grant, these variances. One of these provisions (§ 142.304), however, requires some explanation.

For small system variances, section 1415(e)(6) of the Safe Drinking Water Act states that such variances are not available for (1) any maximum contaminant level (MCL) or treatment technique for a contaminant for which a NPDWR was promulgated prior to January 1, 1986, or (2) a NPDWR for a microbial contaminant or an indicator or treatment technique for microbial contaminant. As a result, the Agency will not be listing small system variance technologies for microbial contaminants, and the proposed rule (§ 142.304) prohibits the primacy agency

from granting a variance for a microbial contaminant.

Similarly, the Agency will not be listing any variance technology for an MCL or treatment technique for a contaminant for which a NPDWR was promulgated prior to January 1, 1986 or allowing any variances for such contaminants (see § 142.304). With respect to this latter category, however, the scope of the statutory prohibition is somewhat ambiguous. The Agency must consider whether Congress intended that the prohibition apply to a contaminant for which an MCL was established prior to 1986, even if subsequently revised, or whether the prohibition only attaches to the pre-1986 regulation itself (and thus would not apply to any future regulations for a contaminant), or whether the prohibition attaches to the pre-1986 level at which a contaminant was regulated (but not to more stringent levels in future regulations). The statutory language could be amenable to any of the three interpretations, and while the legislative history for this provision provides conflicting explanations (*cf.* Senate Report 104–169 at 55–56 with House Report 104–632 at 39), there is no explanation of the policy rationale for any particular interpretation.

The Agency surmises that the intent behind this provision is to prohibit a public water system from obtaining a variance for a contaminant for which compliance should have been achieved long ago. At the same time, the Agency does not believe that this rationale applies where the Agency revises a pre-1986 regulation to make it more stringent. As a result, the Agency interprets section 1415(e)(6)(A) prohibition to apply to the level at which any contaminant was regulated before 1986; therefore, variances are not available for systems above the pre-1986 level even if subsequently revised. (Note that several of the pre-1986 levels were interim levels and have already been revised.) However, if the Agency revises a pre-1986 level and makes it more stringent (i.e., makes the MCL lower), then a variance would be available for that contaminant, but only up to the pre-1986 MCL. The Agency requests comment on this approach and statutory analysis.

G. Small System Variance Requirements

Sections 142.306–142.310 of the proposed rule establish the conditions under which the primacy agency can grant small system variances. The Agency has attempted in the proposed rule to provide flexibility in the process of applying and reviewing requests for small system variances. For example, the Agency has not specified any particular form of a variance application or who (the system or the State) needs to provide the relevant information; rather, the Agency has only specified that the information must be sufficient for the primacy agency to make certain findings and that those findings are documented in writing. Additional rationale for several of the provisions is discussed below.

1. Section 142.306—Compliance Options Analysis

Sections 1415(e)(1)–(3) of the Act identify the conditions under which small systems may receive a small system variance. In the proposed rule, § 142.306(b) codifies these conditions and includes concepts related to the State Capacity Development Strategy.

The compliance options analysis is an integral element of sections 1415 and 1416 of the Act, as well as under the proposed rule at § 142.306(b)(2). Similar in concept to capacity development, a compliance options analysis can allow the State to consider the underlying reasons for noncompliance, and what options are available to the system to return to compliance for the long term. Under the Act, such options include some form of treatment, development of an alternative source, or management restructuring or consolidation with a nearby system. States may wish to include a compliance options analysis as part of their capacity development strategy to address the available options for noncompliant public water system to return to compliance.

Management changes which could be considered by the State in performing such a compliance options analysis include financial management changes, the appointment of a State-certified operator under the State's Operator Certification program, contractual agreements for a more efficient and capable public water system based on joint operation, etc.

The 1996 Amendments to the Safe Drinking Water Act place strong emphasis on technical, managerial, and financial capacity as integral components of the implementation strategies of the Act. There is strong statutory linkage between section 1420 of the Act (the capacity development provisions), and section 1415 (the variances and exemptions provisions), and the Agency has attempted to reflect this linkage in § 142.306(b) of the proposed rule.

Section 1415(e)(7)(A)(ii) of the Act states that today's proposed rule must include requirements concerning the technical and financial capability to operate and maintain a small system variance technology. Therefore, under proposed § 142.306(b)(4), a State or the Agency must find that a small system has the technical and financial capacity to operate a variance technology before granting a small system variance.

However, the Agency recognizes that there may be instances in which a small system is otherwise eligible for a variance, but lacks the technical and financial capability to operate the variance technology. Since enhancing technical and financial capacity of public water systems will likely be dominant goals in State capacity development strategies, a State may wish to focus elements of its capacity development strategy to help systems in such a situation develop the technical and financial ability to operate a small systems variance technology.

Furthermore, under section 1420 of the Act, the State could face the possibility of Drinking Water State Revolving Fund withholding unless, under the capacity development strategy in section 1420(c) of the Act, the State develops a strategy to help systems enter and remain in compliance with National Primary Drinking Water Regulations (NPDWRs) by enhancing their technical, financial, and managerial capacity to comply. Additional considerations and conditions related to the protection of public health are addressed in sections III.G.6 and V.F. of this preamble.

2. Section 142.306(b)—Documentation of State Considerations in Reviewing Small System Variances

The proposed regulations require that States document their findings regarding a small system's eligibility for a small system variance. Where the State does not have primary enforcement responsibility under section 1413 of the Safe Drinking Water Act, the Agency will document its findings for the record, if it grants a small system variance. Such documentation fulfills many goals.

Documentation of small system variance findings, as required in § 142.306 of the proposed rule, serves as a written record of decision which the public can review in preparation for the required public hearing or in preparation of a petition to the Administrator. In addition, a summary of the findings and the bases for such findings should be included in the required public notices associated with the proposal of such small system variances.

Sufficient documentation of the State's findings regarding a system's eligibility for a small system variance

will also be necessary for the Agency's periodic review of State-issued variances, the Agency's approval of variances issued to systems serving between 3,300 and 10,000 persons, and the Agency's review of a petition to object to a variance. Where adequate documentation of findings is not available, the Agency may have to summarily overturn, reject, or object to a variance.

Documentation required in the proposed rule must indicate not only that a certain factor listed in § 142.306 of the proposed regulations was considered, but must also include the rationale for decisions by the State regarding each of the required findings, as well as the underlying facts supporting that decision.

3. Section 142.306(b)(2)—Affordability Criteria

Section 142.306(b)(2) of the proposed rule codifies the statutory requirement that States undertake a compliance options analysis in accordance with the State's own affordability criteria.

Section 1415(e)(7)(B) of the 1996 Safe Drinking Water Act, as amended, requires the Agency to publish, within eighteen months of the Act's enactment, information to assist the States in formulating affordability criteria. According to the Act, this information is to be developed by the Agency in consultation with the States and the Rural Utilities Service (RUS) of the U.S. Department of Agriculture. States are to develop affordability criteria to make determinations relative to compliance options available to small drinking water systems, including eligibility for small system variances under section 1415 of the Act, as amended. The Agency published this document on February 6, 1998 and is available by contacting the Safe Drinking Water Hotline at 1–800–426–4791 (request document number 816–R–98–002). The Agency may use principles in this document to develop affordability criteria for granting small system variances in those areas in which the State does not have primary enforcement responsibility under section 1413 of the Safe Drinking Water Act.

4. Section 142.306(b)(3)—Availability of Approved Variance Technologies

Section 1412(b)(15)(D) of the Act requires that, not later than August 6, 1998, the Agency issue guidance regarding the available variance technologies for each national primary drinking water regulation for which a variance may be granted. This guidance is currently in development by the Agency's Office of Groundwater and Drinking Water and is anticipated to be released by the statutory deadline. The proposed variance regulations include, in various sections (including § 142.306), the requirement that, during review of an application for a small system variance, a primacy State or the Administrator make a finding whether, among other things, the Administrator has published a variance technology in accordance with section 1412(b)(15) for the applicable maximum contaminant level or treatment technique for which that variance is sought.

Pursuant to section 1412(b)(15)(A) of the Act, variance technologies may not suffice to achieve compliance with the relevant maximum contaminant level or treatment technique, but the variance technologies must achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. In addition, section 1412(b)(15)(B) requires that any identified variance technology be determined by the Administrator to be protective of public health.

For further discussion of adequate protection of human health, please see section III.G.5 of this preamble. In addition, section V.F. provides a discussion of health matters related to protection of children and environmental justice concerns.

5. Section 142.306(b)(5)—Adequate Protection of Public Health

Section 142.306(b)(5)(i–ii) of the proposed rule codifies the statutory requirement that the primacy agency grant a small system variance only where the terms ensure adequate protection of public health, considering the source water quality and removal efficiencies and expected useful life of the small systems variance technology. Under section 1412(b)(15)(B) of the Act, the Administrator, in identifying variance technologies for small systems, must determine that the technology is protective of public health considering the quality of the source water to be treated and the expected useful life of the technology. The Agency believes that Congress intended the Administrator to make a determination that, on a national level, any variance technology identified is generally protective of public health when applied within general source water conditions and operating and maintenance procedures. However, recognizing that the level of public health protection afforded by a specific technology could be dependent on site-specific factors that may vary system by system, Congress provided for a corresponding requirement that the State also make a determination that the terms of the variance as applied to a particular system adequately protect public health.

In section 1412(b)(15)(C) of the Act, Congress further provided that the Administrator must include in the guidance identifying variance technologies any assumptions supporting her determination that a listed technology is protective of public health, where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Agency believes that Congress intended this information to be used by States to determine if the assumptions used by the Administrator in determining that a technology is protective of public health are applicable to the specific small system applying for a variance, and define what terms or conditions will ensure adequate protection of public health. In making a finding of adequate protection of public health, States need to consider the elements in the source water that may interfere with the performance of the technology. Depending on the specific technology being implemented, these may include the current level of contamination, variation in levels of contamination, the rate of change in those variations, the frequency in which the variations occur, and the duration that contamination remains at elevated levels (days, weeks, months). States should then use these types of information, as appropriate, to set site-specific terms and conditions which will adequately protect public health.

As previously discussed, EPA believes that Congress intended the Administrator to make a determination that, on a national level, any variance technology identified is generally protective of public health under general source water conditions and operating and maintenance procedures. The variance technology guidance under section 1412(b)(15)(C) will identify assumptions used by the Administrator in determining that each technology is protective of public health. In doing so, the guidance will identify the typical removal efficiency achieved by each variance technology listed by the Administrator, considering the overall capabilities of the treatment process and the source waters on which the technology would typically be applied. The guidance will also discuss source water characteristics that can adversely affect the removal of the contaminant by the process. These general source water characteristics will include a description of other

contaminants that may interfere with treatment (such as sulfate or iron), pH, hardness, total dissolved solids, and turbidity, among others. General guidance on treatment modifications that can address the adverse impacts will also be included. As an example, the guidance may identify total dissolved solids in the source water as having potential to foul the membrane in the treatment process, and therefore may suggest that the membrane be more closely monitored and more frequently replaced. The State may use this information in the guidance to set specific terms and conditions on the operation of the technology that will ensure adequate protection of public health. In the previous example, such terms might include how often the membrane should be monitored and replaced, considering the exact levels of total dissolved solids in the source water and any other factors that may interfere with removal.

EPA is requesting comment on whether it would be useful and appropriate, at some time in the future, to provide additional, technology-specific guidance on site-specific factors that should be considered and appropriate terms and conditions that may be needed to ensure adequate protection of public health. Congress clearly left the responsibility to consider site-specific factors and define appropriate terms and conditions to the States, and EPA does not wish to diminish that responsibility. At the same time, the Agency believes it may be efficient for EPA, to identify, in the context of its determination that a technology is protective, those factors of which the Agency is aware that may be appropriate for the State to consider on a site-specific basis and to suggest appropriate responses to situations which pose additional risks. EPA is soliciting comment and recommendations on both the need for and appropriateness of such guidance and on its substantive content if provided.

In addition to the statutory requirements that the State consider the quality of the source water and removal efficiencies and useful life of the technology in its determination of adequate public health protection, EPA is also considering including a requirement that the States consider disproportionate impacts and risks to sensitive sub-populations, including infants and pregnant or nursing women. Although a leading risk to sensitive subpopulations from drinking water comes from infectious contaminants, which are specifically excluded by the Act from eligibility for small system variances, there may be other contaminants which pose special risks to sensitive subpopulations. In general, EPA would consider such risks in its national determination that a variance technology is protective of public health. There may be instances, however, where site-specific factors would specifically affect the risk to sensitive subpopulations and should thus be considered by the State in that light. EPA is requesting comment on the appropriateness of including in the final rule a requirement that the State specifically consider impacts on sensitive subpopulations in its determination of adequate public health protection. Commenters are encouraged to provide specific examples of contaminants for which site-specific conditions may result in special risks to sensitive subpopulations. One alternative to such a requirement would be for EPA to include in guidance specific factors that may result in special risks to sensitive subpopulations and suggestions on how to address such risks. EPA is also soliciting comment on this alternative.

6. Section 142.307—Terms and Conditions of Small System Variances

Section 142.307 outlines what terms and conditions must be included in a small system variance. A State or the Administrator must clearly specify enforceable terms and conditions of a small system variance. The terms and conditions of a small system variance issued under this subpart must include, at a minimum, proper installation of the applicable small system variance technology, proper operation and maintenance of the technology, and monitoring requirements for the contaminant for which a small system variance is sought as specified in 40 CFR Part 141. If a contaminant level is above the maximum contaminant level, the public water system is required to monitor, at least, quarterly. The State may require more frequent monitoring. In addition, the State must include any other terms or conditions that it determines that are necessary to ensure adequate protection of public health.

The small system variance must also include a schedule for the public water system to comply with the terms and conditions of the small system variance. At a minimum, the schedule should include increments of progress and quarterly reporting to the State or Administrator of the public water system's compliance with the terms and conditions of the small system variance. This quarterly reporting will enable the primacy agency to adequately track compliance of the schedule. In addition, States are required under 40 CFR Part 142.15(a)(1) to report on a quarterly basis to EPA any violations of the terms and conditions of a small system variance.

The schedule must also notify the public water system when the State or the Administrator will review the small system variance under § 142.307(d). The intent of this provision is to address the concerns of public water systems that they be provided adequate notice of when the State or Administrator will review the variance.

7. Section 142.307(c)(4)—Compliance Period for Small System Variances

Section 142.307(c)(4) of the proposed rule codifies the statutory language regarding the duration of variances. In accordance with section 1415(e)(4), § 142.307(c)(4) of the proposed rule states that the terms and conditions of a small system variance must require compliance with the conditions of the variance as soon as practicable but not later than three years after the date on which the variance is granted. It is the Agency's expectation that this three-year period will usually be sufficient.

However, section 1415(e)(4) of the Act also states that the Administrator or the State may allow up to two additional years under two situations: (1) Where the Administrator or the primacy State determines that additional time is necessary for capital improvements to comply with a variance technology, secure an alternative source of water, or restructure or consolidate, or (2) to allow for financial assistance provided pursuant to section 1452 of the Act or any other Federal or State program.

The Agency interprets section 1415(e)(4) to allow the primacy agency to grant the two additional years at the time of issuance, upon a determination by the primacy State or the Administrator that those two additional years are necessary to ensure compliance. Therefore, it is possible, under certain conditions, that small systems may receive a five-year compliance schedule to achieve compliance with the terms and conditions of the small system variance.

8. Sections 142.308–142.310—Public Participation Requirements for Issuance of a Small System Variance

a. Overview. The 1996 Amendments to the Safe Drinking Water Act provide for many opportunities for the public to be involved in decisions that affect the delivery and treatment of drinking water. Today's proposed rule provides opportunities for the public to become involved in the decision-making process of whether a variance or exemption

should be granted. The Agency's intent in the proposed regulations is to provide sufficient opportunity for meaningful public participation in the variance and exemption process, while, at the same time, keeping the public notification requirements for small systems and States manageable.

The Agency is required under section 1415(e)(7)(A)(i) of the Act to promulgate regulations specifying requirements for notifying the consumers of the public water system that a small system variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the small system variance before the variance is granted. Today's proposed rule addresses this statutory mandate through §§ 142.308–142.310 of the regulations. These requirements are also intended to ensure that persons served by the system who may wish to file a petition with the Administrator objecting to the variance, as provided for in Section 1415(e)(10)(B) of the Act, have adequate information and time to do so.

The overall structure of the process intended by today's proposed regulations for granting a small system variance is as follows:

(1) A small public water system which is in noncompliance with an eligible maximum contaminant level or treatment technique submits an application to the primacy agency for a small system variance;

(2) The primacy agency reviews the small system's application and performs a compliance options analysis to determine if a small system variance should be issued to the public water system.

(3) If a small system variance can be issued in accordance with the Act and the proposed regulations, and upon finding and documenting the required information under Section 142.307 of the proposed rule, the primacy agency establishes the terms and conditions of the proposed small system variance;

(4) The primacy agency prepares a draft of the small system variance including the terms and conditions of the same;

(5) The primacy agency provides notice to consumers of the system of its intent to propose the small system variance and of a public hearing on the proposed variance, including information on the contaminant and its potential health effects, the compliance options considered, and the terms and conditions of the proposed variance;

(6) The primacy agency also proposes the variance by publishing a notice in the State equivalent of the **Federal Register**, or, in the case of the Administrator, in the **Federal Register**;

(7) Either before, or within 15 days after publication of this notice, the primacy agency conducts a public hearing on the draft proposed small system variance;

(8) If a State proposes to issue a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting documentation, including any public comment received prior to this submission, to EPA for review and approval of the proposed variance;

(9) Within thirty days of the proposal date of any small system variance, persons served by the system may petition the Administrator to object to the proposed small system variance; and

(10) The Administrator must respond to all such petitions within 60 days of receiving them and may object to a proposed small system variance within ninety days of the proposal date.

EPA is proposing that the State may provide the notice for a public meeting on the small system variance at the same time that the State notifies the public that it intends to propose the small system variance. Under this approach, the State would not be required to issue an additional notification directly to consumers on the actual date of proposal. Such notice must be issued at least 15 days before the actual proposal date and at least 30 days before the public meeting. For purposes of the consumer petition process, the variance is proposed on the actual proposal date (generally the date of publication in the State or **Federal Register**) as opposed to the date that the State issues one or more public notices.

In summary, the proposed regulation requires a State to provide at least one public notice directly to the system's consumers (in addition to publishing the proposed variance in the State or **Federal Register**); to fulfill the requirement of notifying the public of the public hearing and proposal of the small system variance. This approach considers the burden on the State and system seeking the variance of providing more than one such notice. However, the Administrator encourages the State and small systems to engage the public in the development and issuance of the small system variance early in the process.

The Agency also requests comments on an alternative approach to the State notification requirements included in the proposed regulatory language. Under this approach, the Agency would require that the State provide two distinct public notices directly to water system consumers during the small system variance process, in addition to publishing the proposed variance in the State or **Federal Register**. This proposal would require that the State provide public notice (1) announcing the required public meeting at least 30 days before the meeting and (2) at the time a State proposes to issue a small system variance. In addition, the State would be required to hold the public meeting before the State proposes the small system variance. Before holding a public meeting, the State or the Administrator would need to make public a draft of the proposed small system variance to ensure that the public is adequately informed of the terms and conditions likely to be in the proposed small system variance.

The Agency requests comments on whether the Agency should require two separate notices by the State to water system consumers (in addition to publication of the proposed variance in the State or **Federal Register**), one announcing the public meeting and a second on proposal of the small system variance.

Although the alternative approach may increase the State burden by requiring two different notices, adopting this approach in the regulation may maximize public notification and participation in the issuance of a small system variance. In addition, by requiring that the public meeting be held before proposing the small system variance, a person served by the system would be guaranteed at least 30 days following the public meeting before expiration of the deadline for filing a petition. Under the proposed approach, a person served by the system could have as little as 15 days following the public meeting to file a petition, though they would still be guaranteed at least 45 days from the time they first received notice of the proposed variance (along will all of the required supporting information) to file such a petition. In selecting a final approach, the Agency will consider all comments and attempt to balance the burden to the State and water system with the need to provide adequate opportunity for public participation, including use of the petition process.

b. Notice by public water systems. The Agency is also requesting comment on adding an additional public notification requirement which is currently not a part of the proposed regulatory language. Under this approach, the Agency would require the public water system to provide notice to the persons served by the system that the system is applying for a small system variance.

The intent of this would be to address some stakeholders' concerns that public notification should be provided early in the small system variance process. This alternative would require the system applying for a small system variance to notify the public at the time it applies for a small system variance. The notice would be required to be in the same manner as required for the State in notifying persons served by the system that a variance will be proposed as prescribed, in §§ 142.308(a) through (d) of the proposed regulation (see III.G.8.d below). Consistent with the underlying theme of today's proposed regulations, States would be encouraged to provide assistance to small systems to ensure that the public notification requirements are satisfied.

The Agency requests public comment on whether this additional notification should be a part of this regulation. The Agency recognizes that this would place an additional burden on the small public water system. However, such notification may further the goal of affording early public participation in the development of the small system variance, before the State has conducted its initial compliance options analysis and considered appropriate terms and conditions to ensure adequate protection of public health. The information provided with such a notice would necessarily be less complete than that provided by the State after reviewing the application. The Agency also requests comments on what information should be required in such a notice and whether there is concern over the first notification to water system consumers being one that would necessarily lack complete information.

c. Public hearing requirement. Section 142.309 of the proposed regulations addresses the requirements for a public hearing on a draft proposed small system variance and notice of the public hearing. Consistent with section 1415(e)(7)(A)(i) of the Act, a State or the Administrator is required to provide for at least one (1) public hearing on the small system variance before it is granted. However, before holding a public meeting, the State or the Administrator must make public a draft of the proposed small system variance along with various supporting information as specified in § 142.308(c), to ensure that the public is adequately informed of the terms and conditions likely to be in the proposed small system variance. The State or the Administrator must notify the public of the public hearing (and provide the required supporting information) at least 30 days before the date of the meeting.

d. Manner of public notification. Section 142.308 of the proposed regulations codifies the Safe Drinking Water Act provision that any person served by the system may petition the Administrator to object to the granting of a variance. The notice requirements in the proposed regulations are intended to provide adequate notice for persons who may wish to petition the Administrator to ask the Agency to object to the variance.

Operators of small systems requested that the Agency address the issue of whether persons who are not billing customers of the system must be provided a notice by direct mail considering the burden associated with identifying and obtaining mailing addresses for non-billed consumers of a system's water. In light of all comments provided to the Agency during the stakeholder process, the Agency is proposing to require individual notice only to billing customers of the system. In addition, notice must be provided in a brief and concise manner to regular consumers who are not billing customers, by some other reasonable method, such as publication in a local newspaper, posting in public places, or delivery to community organizations. Although this might not reach persons outside the service area, it would reach factory workers and tenants of apartment houses and condominiums, even if those persons do not receive water bills. Today's proposed rule would therefore require that a State provide some form of notice to all persons served by the system on a regular basis.

e. Content of notices. Section 1415(e)(7)(A)(i) of the Safe Drinking Water Act requires that public notification include information regarding the contaminant and variance. Section 142.308(c) of the proposal implements this statutory requirement. In this provision, the Agency is requiring, along with other information, specific health effects language to be used by States in the notices. The Agency is proposing to require use of the health effects language developed for the recently proposed consumer confidence report rules, 63 **Federal Register** 7625, 7631–7632 (Feb. 13, 1998). The Agency believes that there are many benefits to the use of standard health effects language in the various public notice provisions of the amended Safe Drinking Water Act, particularly in reducing confusion for the systems and the public. If the language in the consumer confidence report rules is revised after public comment, the Agency intends to use the revised language for this rule.

The Agency is also implementing stakeholders' concerns that notices not contain highly technical information by requiring the notices to provide a brief non-technical summary of the variance process and compliance options considered by the system and the primacy agency. In addition, all proposed notices would be required to meet the multilingual requirement in § 142.308(c)(7) of the proposed regulations, if appropriate. This requirement specifies that in communities with a large portion of non-English-speaking residents, information in the appropriate language regarding the content and importance of the notice should be included. The multilingual requirement is consistent with the Agency's environmental justice policy.

f. Consumer petition process. Section 1415(e)(10)(B) of the Safe Drinking Water Act allows for persons served by the system to petition the Administrator to object to the granting of a small system variance; such petitions must be submitted not later than 30 days after a State proposes to issue a small system variance. This statutory provision is implemented in § 142.310 of the proposed regulations. Consumer petitions should be mailed to the EPA Regional Administrator. The proposed rule requires that the State or the Administrator include, in the public notice of the proposed small system variance, information to consumers regarding the petition process and the address of the EPA Regional Administrator for their State.

H. Sections 142.311 and 142.312.—Bases for Administrator's Objections to State-Proposed Small System Variances

Pursuant to section 1415(e)(9) of the Act, § 142.312(a) of the proposed rule requires a primacy State, which is proposing to grant a small system variance to a public water system serving more than 3,300 and fewer than 10,000 persons, to submit that variance to the Administrator for review and approval prior to issuance. Section 142.312(c) requires that, if the Administrator disapproves the variance, the Administrator notify the State in writing of the reasons for such disapproval. Such disapproval must be based upon a determination that the variance is not in compliance with the requirements of the Act and regulations, including the requirement that the system cannot afford to comply with the maximum contaminant level (MCL) or treatment technique for which the variance is being sought, in accordance with the State affordability criteria.

In addition, § 142.311(a) of the proposed rule requires a primacy State, which is proposing to grant a small system variance to a public water system serving 3,300 or fewer persons, to submit that variance to the Administrator for review prior to issuance.

Section 1415(e)(10) of the Act addresses objections to small system variances. Pursuant to section 1415(e)(10)(A) of the Act, § 142.311(b) of the proposed rule states that the Administrator may review and object to any variance proposed to be granted by the State, if such objection is communicated to the State not later than 90 days after the State proposes to grant the variance. Again, the Agency expects that such objections would be based upon a determination that the variance is not in compliance with the requirements of the Act and the rule, including a finding consistent with the State's affordability criteria that the system cannot afford to comply. In accordance with section 1415(e)(10)(A) of the Act, the notification to the State must include the 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 the Act and the rule.

I. Section 142.313.—Bases for Administrator's Review of State Small System Variance Program

Pursuant to section 1415(e)(8)(A) of the Safe Drinking Water Act, § 142.313 of the proposed rule requires the Administrator to periodically review the primacy State's variance program to determine whether variances granted by the State comply with the requirements of the Act. The Administrator may determine that the variances granted by the primacy State are not in compliance with the State's affordability criteria and the requirements of the Act. Pursuant to section 1415(e)(8)(B) of the Act, § 142.313(b) of the proposed rule requires the Administrator to notify the State in writing of the deficiencies and to make public the determination.

J. General Variances: Time Limitation

Section 1415(a)(1)(A)(ii) of the Safe Drinking Water Act states that a schedule prescribed under a general variance must require compliance by the public water system, with each maximum contaminant level or treatment technique requirement with respect to which the variance was granted, as expeditiously as practicable (as the State may reasonably determine) but sets no specific final date for compliance other than that in the compliance schedule.

The Agency is seeking comment on whether to add language to § 142.20 of the proposed regulations that would require any variance issued by a State pursuant to section 1415(a) of the Safe Drinking Water Act to prescribe a schedule that would require a public water system to install technology, which the Administrator finds available, within three years of the issuance of the variance. In addition, the regulations could be modified to allow the State or Administrator to grant an additional two years to complete necessary capital improvements to achieve compliance or to obtain financial assistance provided under section 1452 of the Safe Drinking Water Act or any other Federal or State program.

The Agency recognizes that under a general variance, the State must prescribe a schedule which requires compliance with the conditions of the variance as expeditiously as possible (as determined by the State) which may be less than three years for a given public water system. Under this proposal, a State would also have the flexibility to require compliance under a general variance within a possible five-year time period.

This proposal is based upon the rationale that because sections 1415(a) and 1415(e) of the Act require the installation of specific technology as specified by the Administrator, it is reasonable to require a system to install the technology specified through section 1415(a) within the same time periods as required for section 1415(e). On the other hand, Congress did not choose to impose a time limit on general variances, further differentiating them from small system variances. Therefore, the option of imposing such a time limit may not be appropriate for general variances. The Agency requests public comment on whether the final rule should specify compliance time periods for general variances issued under section 1415(a) of the Safe Drinking Water Act, with such time periods matching those specified for small system variances issued under section 1415(e).

K. Relationship of Exemptions and Small System Variances

Under section 1416(b)(2)(D) of the Safe Drinking Water Act, a public water system may not receive an exemption under section 1416 if the system was granted a small system variance under section 1415(e) of the Act. However, the Act is silent on whether a small system variance under section 1415(e) may be issued after the issuance of an exemption under section 1416.

The Agency firmly believes that, at the conclusion of the established compliance schedule, a public water system receiving an exemption for a given contaminant should come into full compliance with the applicable national drinking water regulation for which the exemption was granted, wherever possible. However, during the stakeholders process, the Agency received comments indicating that the regulations should implement the exemption provisions of the Act to allow, under certain conditions, a public water system which has received an exemption to subsequently receive a variance for that same contaminant if it turns out that there is no affordable compliance technology for the system.

Today, the Agency is considering three alternatives to address whether a small system variance may be issued after an exemption. The first approach would prohibit the issuance of a small system variance after an exemption. Under this approach, if a public water system cannot achieve full compliance with national primary drinking water regulations at the end of the exemption period, the public water system would be subject to an enforcement action by which failure to comply would be remedied. The second approach would allow a State or the Administrator to issue a small system variance after an exemption for the same contaminant, but only under specific conditions. For example, the rule might require that before a small system variance is issued to a system that has already received an exemption, the primacy agency must make a determination whether the system was taking all practicable steps to meet the requirements of the established compliance schedule under the exemption. Under the third approach, due to the variety of circumstances under which the issuance of a small system variance after an exemption could be appropriate, the final rule would allow such a variance but leave the decision to the implementing agency regarding which such circumstances merit the issuance of a small system variance after an exemption for the same contaminant. The Agency requests public comment on which regulatory approach is most appropriate.

L. State Revolving Fund Linkage to Exemptions

Strong statutory linkage exists between the exemptions provisions in section 1416 of the Safe Drinking Water Act and the State Revolving Fund provisions of section 1452 of the Act. Today's proposed rule attempts to reflect that linkage. Under section 1452 of the Act, the State may provide at its discretion additional subsidization to a recipient of State Revolving Fund assistance for a project serving a disadvantaged community according to the State's affordability criteria for drinking water. Under section 1416(a) of the Act, States are directed to consider whether a system serves such a disadvantaged community in determining whether compelling economic factors prevent the system from complying with an MCL or treatment technique, which is one of the eligibility requirements for receiving an exemption. To implement this provision and reflect the linkage existing in the Act, today's proposed regulation, in §§ 142.20 and 142.50, requires that the primacy agency consider whether the public water system serves a disadvantaged community, pursuant to section 1452(d) of the Act.

The State Revolving Loan Fund program plays a prominent role in the consideration of whether to issue exemptions. Today's proposed regulation requires the State to consider whether State Revolving Loan Fund assistance is available to the public water system to assist it in achieving compliance with the Act. That consideration should include an assessment of the public water system's technical, financial, and managerial capacity, and whether assistance can help bring the system into compliance with the Act. These two provisions, the State Revolving Fund provisions and the exemptions provisions, can be used together to complete two important tasks: (1) ensure that State Revolving Loan Fund assistance is targeted towards those public water systems most in need of such assistance, and (2) allow systems which receive such assistance to be able to use it in conjunction with an exemption in a way that will produce full compliance with the Act within the compliance schedule established by the State.

M. Exemption: Renewals for Small Systems

Under section 1416(b)(2)(A) of the Safe Drinking Water Act, an exemption issued to a public water system must prescribe a schedule requiring 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 three years after the otherwise applicable compliance date established in section 1412(b)(10). Section 1416(b)(2)(C) states ''[i]n 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 . . . 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 [the established compliance schedule].''

The intensive compliance options analysis required, under § 142.20(b)(1) and § 142.50(a), to be performed before an exemption is initially granted should indicate whether an exemption is appropriate. If an exemption is appropriate after the compliance options analysis, the primacy agency should facilitate and work with the system to ensure compliance as soon as practicable, but within three years of the otherwise applicable compliance date, including providing financial assistance under section 1452 of the Act. Under §§ 142.20(b)(2) and 142.56 of the proposed rule, two-year extensions of exemptions pursuant to section 1416(b)(2)(C) of the Act may only be granted to systems which serve 3,300 or fewer people and which need financial assistance, and upon State review of the small system's progress and the State's subsequent determination that the small system and is taking all practicable steps to meet the requirements of the Act.

The Agency interprets the use of the word ''renewal'' by Congress to indicate that additional two-year periods may not be granted ''up-front'' to the small system at the time of initial issuance of the exemption. Review by the primacy agency is necessary in this renewal process to ensure that the system is taking all practicable steps to meet the requirements of the Act. However, it is not anticipated that the review process to renew an exemption will be as complex as the initial determination process, including a compliance options analysis, performed by the primacy State or the Administrator prior to granting the exemption. Rather, the State should review the progress of the small system to determine if the system is taking all practicable steps to meet the compliance schedule. Even though not required by section 1416 of the Act, the primacy State may wish to consider the incorporation of public participation into the review process of an exemption. If the State determines that a renewal would not be appropriate under the Act or regulations, the public water system must comply with applicable national primary drinking water regulations at the end of the exemption period.

The Agency requests comment on the above approach and on the level of effort required by the primacy agency for review and issuance of renewals of exemptions. In addition, the Agency requests comment on whether the Agency should consider allowing the extensions to be incorporated in the initial compliance schedule.

IV. Cost of Rule

The purpose of this rule is to allow systems, especially those serving under 10,000 people, to adopt affordable technologies that improve the quality of their water and move them closer to compliance with national drinking water standards. By relieving these systems of the obligation to achieve full compliance with applicable standards when such compliance is not affordable, while maintaining public health protection, the rule has the potential to generate significant cost savings. However, since the vast majority of systems currently are already in compliance with existing standards, the Agency expects the new variance and exemption provisions to be used primarily by systems unable to achieve compliance (or which require additional time to achieve compliance) with future standards. Because the Agency does not yet know what these new standards will require or what variance technologies will be approved, it is not possible to quantify the potential cost savings of the rule with respect to future standards. Rather, at the time that new standards are promulgated, the Agency will factor the availability of variances and exemptions under appropriate conditions into the cost estimates for these standards.

The Agency is currently working on identifying variance technologies for existing standards. Once these technologies have been identified and preliminarily financially analyzed, it may be possible for the Agency to estimate the potential cost savings from variances for these existing standards. However, the analysis of these technologies is not far enough along for the Agency to provide an estimate of these cost savings with the current proposal. In addition to the savings associated with adopting affordable technologies, however, the Agency anticipates that systems (and States) will also realize savings associated with a reduction in enforcement actions (and

associated judicial proceedings) for systems that are not able to comply with existing standards but will now have greater access to variances and exemptions. The Agency has therefore performed an illustrative analysis of the costs to systems of applying for variances and exemptions and the cost to States of granting them, relative to the savings from reduced enforcement actions. This analysis focused on two sets of existing standards, those contained in the Lead and Copper Rule, and those contained in the Phase II/V Rule.

Based upon this economic impact analysis (EIA), public water systems would realize net economic benefits as a result of today's proposed rule. Results of the impact analysis show that, if all eligible public water systems in all 56 States and territories apply for and are granted variances under sections 1415(a) or 1415(e), or exemptions under today's proposed rule, for the rules considered in this analysis, then the regulation will show a net annualized economic benefit of $573,706 to the Agency, States, and public water systems, not including benefits due to increased public health protection or savings associated with the installation of affordable technologies. A summary of this EIA is available in the Office of Water Docket, #W–97–26.

The Agency performed an economic impact analysis of today's proposed rule to examine the economic costs and benefits of this rule on the Agency, State Drinking Water programs, and public water systems over a nine-year period. A nine-year period was chosen because systems serving fewer than 3,300 persons can operate for a maximum of nine years under an exemption, if they receive all available extensions. Small system variances, however, are available for the useful life of the variance technology, which can depend on various technical and financial factors. Thus, nine years was chosen as an appropriate time frame in which to examine the costs incurred by a variance and/or exemption program.

The Agency's economic analysis for the variance and exemption rule include variables such as administrative burden on States and the Agency, as well as costs on public water systems of applying and providing notice of application under the proposed rule. Costs to the Agency and States specifically include review of variance and exemption applications, setting terms and conditions of small system variances, and setting and enforcing milestones within the exemption period for a system. Some administrative costs, such as those associated with adopting new regulations or developing new criteria, were not included in the analysis. Estimated benefits include administrative costs associated with noncompliance avoided for States and the Agency, as well as litigation, judicial, and other process costs avoided by public water systems and regulatory agencies as a result of having variance and exemption programs in place. These costs avoided are not specific to any rule.

For the purposes of the economic impact analysis, the Agency selected two example regulations for which a system may apply for either a small systems variance or exemption. The Safe Drinking Water Act states in section 1416(b)(2)(A) that exemptions require compliance as soon as practicable but not later than 3 years after the otherwise applicable compliance date established for a given contaminant. Because no SDWA rules have been promulgated in the past three years, estimating the costs of implementing an exemption program was somewhat problematic, i.e., there are currently no national primary drinking water regulations for which exemptions can be currently granted.

As an alternative, the Agency used the Lead and Copper Rule (last promulgated in 1995) as an example so that the Agency could estimate the process costs of implementing an exemption on all affected entities. The Lead and Copper Rule was chosen because over 68,093 public water systems (approximately 38% of all public water systems) are subject to that rule, which provides a practical upper bound on the potential costs associated with processing and issuing exemptions for a rule. Further, the Agency has access to Lead and Copper Rule compliance data for those 68,093 public water systems.

The Agency also selected the Phase II/V regulation (inorganic contaminants) as an example of a pool of maximum contaminants levels for which variances under sections 1415(a) and 1415(e) may be granted. This regulation was selected because, for the purpose of issuing small system variances under section 1415(e), variance technologies are likely to be designated by the Agency for some of the maximum contaminant levels under this regulation. This assumption is based on preliminary analyses performed in preparing a small systems variance technology list under section 1412(b)(15) of the Safe Drinking Act. Also, Phase II/V addresses approximately 25 contaminants, some or all which may also be eligible for source water variances under section 1415(a) of the Act. Therefore, Phase II/V helps the Agency obtain a practical upper bound on the potential costs associated with processing and issuing variances for a NPDWR.

In using the Phase II/V Regulation and the Lead and Copper Rule as examples, the Agency does not make any indication as to whether these rules will be eligible for small system variances. The Administrator has not yet finally determined the contaminants for which small system variance technologies will be designated.

The table below provides, by system size as number of persons served, the number of public water systems (PWSs) subject to the Lead and Copper Rule and the Phase II/V Rule.

System size (in persons served)	All PWS subject to the lead and copper rule	All PWS subject to the phase II/V rule
25–500	51,191	48,100
501–3,300	16,902	14,126
Total < 3,301	68,093	62,226
3,301–10,000	4,323	3,410
Total < 10,000	72,416	65,636
> 10,000	3,529	2,774
Total	75,945	68,410

For both regulations, the Agency used compliance data to estimate the number of systems that may be eligible for a variance under sections 1415(a) or 1415(e) of the Act, or exemptions. The violation rates used in the economic impact analysis are identified in the table below. Violation data for the Lead and Copper Rule was taken from the Safe Drinking Water Information System database; violation rates for the Phase II/V Rule are from the Public Water Supply Supervision program information collection rule.

	Percentage of all PWS potentially eligible for variances/exemptions	
	Lead and copper (percent)	Phase II/V (percent)
Treatment Technique or Maximum Contaminant Level (annual violation rate)	0.50	0.50
Treatment Technique or Maximum Contaminant Level (nine-year violation rate)	4.50	2.00

The number of potentially eligible systems (i.e., systems in violation) was then used to estimate processing costs incurred by implementing a variance

and/or exemption program to all affected entities, summed for both rules. As stated previously, these costs include administrative burden to States and the Agency, as well as the public water systems' costs of applying for variances and exemptions. These costs were then compared to the economic benefits to public water systems, States, and the Agency of avoiding litigation and other administrative costs associated with noncompliance, summed for both rules. The net results are shown below, and costs are shown in parentheses.

	EPA	State drinking water programs	PWS	All entities
Costs	$241,821	$5,041,694	$348,716	.....
Benefits	0	2,863,321	3,342,616	.....
Net annualized economic costs and benefits	(241,821)	(2,178,373)	2,993,900	$573,706
Net present value of economic costs and benefits	.....	.....	.....	4,057,739

The Agency also examined the distribution of net economic benefits within differing size categories of public water systems serving 10,000 or fewer persons. As shown below, systems serving 25–500 persons will show the greatest net benefit from the issuance of variance and exemptions according to the model assumptions.

System size (persons served)	Net annualized economic benefits
25–500	$2,060,939
501–3,300	642,323
3,301–10,000	149,782

According to the economic impact analysis and the above tables, the variance and exemption rule is not considered to have a ''significant impact'' as defined under the Unfunded Mandates Reform Act, nor would it pose an adverse impact on a substantial number of small entities, as discussed in section V.D. of the preamble to today's proposed rule. Instead, public water systems would show a net economic benefit under today's proposed rule.

V. Other Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined, that this rule is a ''significant regulatory action'' because it may raise novel legal or policy issues. The rule seeks to improve public health protection while providing regulatory relief to small systems by encouraging the adoption, by small systems unable to comply with drinking water standards, of affordable technologies that will improve the quality of their water even if they do not achieve full compliance with the MCL or treatment technique requirement for a particular contaminant. Therefore, EPA submitted this action to OMB for review. Substantive changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), generally requires the Agency to consider explicitly the effect of proposed regulations on small entities. The Agency assesses the impact of the proposed rule on small entities and considers regulatory alternatives if a rule has a significant economic impact on a substantial number of small entities. However, under section 605(b) of the RFA, if the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, the Agency is not required to prepare an RFA.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Regulations on variances and exemptions provide regulatory relief from the costs of complying with a maximum contaminant level or a treatment technique under a given national primary drinking water regulation. As directed in the Safe Drinking Water Act, this rule describes procedures and criteria by which those small public water systems which cannot afford the appropriate treatment to comply with a given national primary drinking water regulation can receive a variance or exemption. Thus, public water systems show a net economic benefit under today's proposed rule as a result of being granted a variance or exemption, rather than bear process costs associated with litigation and enforcement. Please see section IV, ''Cost of Rule'', in today's preamble for a more detailed discussion of the economic costs and benefits of today's proposed rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are currently being prepared and will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR No. 270.39) document will be prepared by the Agency to amend the current Public Water System Supervision Program ICR (OMB control number 2040–0090). A copy of the ICR is available from Sandy Farmer, Regulatory Information Division, Office of Policy, Planning, and Evaluation, U.S. Environmental Protection Agency (Mailcode: 2137), 401 M St., S.W., Washington, D.C., 20460, or by calling (202) 260–2740. Information requirements created by this regulation are not effective until OMB approves them.

Information required by this regulation allows the State or the Administrator to determine that the circumstances at a public water system

satisfy the statutory conditions for granting a small system variance or an exemption. Some of the required information allows the Administrator and the public to determine that the public had adequate opportunity to review and comment on a decision to grant a small system variance. The information collection requirements of this rule are mandatory for public water systems applying for either a variance or an exemption and for primacy States that review and either grant or deny these applications. Information collected by this rule will be provided to the public to facilitate public involvement in this process.

Based upon the analysis of the two rules discussed above, total public burden for this collection of information is estimated as 128,178 hours annually. The Agency notes however that the rule is estimated to provide a benefit of 117,414 annual hours of burden reduction by reducing enforcement actions against public water systems unable to comply fully with the maximum contaminant level or treatment technique requirements of the National Primary Drinking Water Regulations. Because this type of burden is not generally counted when developing burden estimates for these regulations, it is not netted out of the burden estimated for the current rule. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Despite the increased burden hours, the rule is expected to provide a net economic benefit to systems choosing to apply for a variance or exemption, as discussed in section IV. This benefit includes avoided litigation and judicial costs, as well as the savings associated with the implementation of affordable technologies.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for the required information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR June 19, 1998 to: Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mailcode: 2137), 401 M St., S.W., Washington, D.C., 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C., 20503, Attn: Desk Office for EPA Office of Water. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an Agency rule for which a written statement is needed, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of the UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of the UMRA allows the Agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before the Agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of Agency regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This is because the rule will apply only to primacy States or Tribes. States or Tribes may choose whether to acquire or maintain primacy under the Safe Drinking Water Act. Further, States and Tribes with primacy may choose whether to issue variances and exemptions; they can decide to not issue any exemptions or variances at all. If they choose to issue variances or exemptions, they are only required to issue variances and exemptions in a manner not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under section 1415 and 1416 of the SDWA. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

Moreover, because this rule establishes procedures and criteria for public water systems to obtain variances and exemptions from Safe Drinking Water Act requirements, the Agency has determined that this rule contains no regulatory requirements that might significantly or uniquely adversely affect small governments and thus this rule is not subject to the requirement of section 203 of UMRA.

E. Enhancing Intergovernmental Partnerships

Executive Order 12875, ''Enhancing Intergovernmental Partnerships,'' October 26, 1995, requires the Agency to consult with State, tribal, and local entities in the development of rules that will affect them, and to document for OMB review the issues raised and how the issues were addressed. As described in section II of the Supplementary Information above, the Agency held several meetings with a wide variety of State and local representatives, who provided meaningful and timely input toward the development of the proposed rule. Summaries of these meetings have been included in the public docket for this rulemaking.

F. Protection of Children and Environmental Justice

Under the Executive Order entitled ''Protection of Children from Environmental Health Risks and Safety Risk,'' dated April 21, 1997, the Agency must ensure that its policies, programs, activities, and standards address environmental and safety risks to children. Every regulatory action submitted to OMB for review under Executive Order 12866 must include information that evaluates the environmental health and safety effects of the planned regulation on children and explains why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

In addition, under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'', dated February 11, 1994, the Agency must make achieving environmental justice part of its mission.

The Agency believes that this proposed rule has the potential to significantly reduce risks to children caused by inadequate drinking water and address environmental justice problems. After a small public water system applies for a small system variance, § 142.306(b) of the proposed rule requires the State to perform a compliance options analysis for the system. Small noncompliant public water systems are often financially distressed as a result of the service population's inability to pay for safe drinking water and other factors. The public water system may have unprotected source waters or is unable to afford the appropriate treatment technology or technique, certified operator, and/or adequate transmission and distribution systems. As required by § 142.306(b) of the proposed rule, an analysis of the applicant system's compliance options will provide insight into alternative means of compliance. This might include some form of restructuring or consolidation with another system, development of a cleaner, safer water source, or using some alternative treatment technique or technology.

If according to a State's affordability criteria, these compliance options are unaffordable for a drinking water system, the State may grant the system a variance. Prior to issuing a variance, § 142.306(b)(5) of the proposed rule requires that the State find that the terms and conditions of a small system variance ensure ''adequate protection of public health.'' Similarly, an exemption can only be granted if its conditions ensure that there is no unreasonable risk to health.'' Both findings are made at the State level on a case-specific basis.

The intent of the small system variance subpart of the rule is to move a system, which is not complying with Safe Drinking Water Act standards because the treatment required is unaffordable, toward or into compliance status by requiring the system to install, operate and maintain treatment which is affordable and protective of human health. Although the level of treatment provided may not meet the maximum contaminant level, it must be determined to be protective of human health—both by the Agency in identifying the approved variance technology and by the primacy State in making such a finding—if the variance is granted.

The Agency believes that a system operating under a small system variance as proposed today will provide better treatment than that provided by a system in noncompliance. Although the drinking water system may not be able to provide water that is consistently below the maximum contaminant level, a water system operating under a variance will be able to create a net gain in the quality of its finished water above what it could provide before installing a variance technology. In turn, this will lead to a net gain in public health protection for infants, children, and nursing or pregnant women as well as for persons in low-income areas, thus protecting children's health as well as alleviating environmental justice problems.

In addition to requirements that ensure public participation in granting variances and exemptions, § 142.308(c)(7) of the proposed rule requires that, in communities with a large portion of non-English speaking persons, notices provided to the public must include information in the appropriate language regarding the content and importance of the notice.

For these reasons, the Agency believes that this rule is consistent with, and implements, the Executive Order on protecting children as well as the Executive Order addressing environmental justice.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by the Agency, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. Because this proposed rule is procedural and does not involve or require the use of any technical standards, the Agency does not believe that this Act is applicable to this rule. Moreover, the Agency is unaware of any voluntary consensus standards relevant to this rulemaking. Therefore, even if the Act were applicable to this kind of rulemaking, the Agency does not believe that there are any ''available or potentially applicable'' voluntary consensus standards. A commenter who disagrees with this conclusion should indicate how the rule is subject to the Act, and identify any potentially applicable voluntary consensus standards.

VI. Request for Public Comments

The Agency seeks public comment on this proposed rule. In particular, several sections of the preamble describe alternative approaches under consideration by the Agency or specifically request comment. The topic areas addressed in these particular sections include: which contaminants should be eligible for small system variances; the usefulness and appropriateness of additional guidance on site-specific determination of adequate public health protection; the appropriateness of requiring States to explicitly consider impacts on sensitive subpopulations, or alternatively of the Agency providing guidance on impacts to such subpopulations; the number and timing of public notices that must be provided prior to granting a small system variance; the content of required health effects language in such notices; whether the Agency should promulgate a specific time limit for compliance with the terms of general variances; whether small system variances should be permitted for systems that are unable to comply within the terms of an exemption; whether exemption renewals should be allowed in advance; and the reporting and recordkeeping requirements of the rule and associated burden. Comments are also welcome on any other aspect of the proposed rule and supporting documentation.

Please submit an original and three copies of your comments and enclosures (including references). To facilitate Agency review and response to comments, the Agency would prefer that commenters cite, where possible, the specific paragraph(s) or section(s) in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters who want the Agency to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Written comments must be received by midnight May 20, 1998. All written comments should be submitted to: W–97–26 Comment Clerk, Water Docket (Mailcode MC4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

Comments may also be submitted electronically to ow–docket@epa.mail.epa.gov. Electronic comments must be identified by the docket number W–97–26. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and form of encryption.

The record for this rulemaking has been established under docket number W–97–26, and includes supporting documentation as well as printed, paper versions of electronic comments.

List of Subjects in 40 CFR Part 142

Environmental protection, Administrative practice and procedures, Chemical, Indian-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: April 14, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 142 is proposed to be amended as follows:

PART 142—[AMENDED]

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 142.10 is amended by revising paragraph (d) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(d) *Variances and exemptions.* (1) If it permits small system variances pursuant to Section 1415(e) of the Act, it must provide procedures no less stringent than the Act and subpart K of this part.

(2) If it permits variances (other than small system variances) or exemptions, or both, from the requirements of the State primary drinking water regulations, it shall do so under conditions and in a manner no less stringent than the requirements of Sections 1415 and 1416 of the Act. In granting these variances, the State must adopt the Administrator's findings of best available technology, treatment techniques, or other means available as specified in subpart G of this part. (States with primary enforcement responsibility may adopt procedures different from those set forth in subparts E and F of this part, which apply to the issuance of variances (other than small system variances) and exemptions by the Administrator in States that do not have primary enforcement responsibility, provided that the State procedures meet the requirements of this paragraph); and

* * * * *

3. Section 142.20 is revised including the section heading to read as follows:

§ 142.20 State-issued variances and exemptions under Section 1415(a) and Section 1416 of the Act.

(a) States with primary enforcement responsibility may issue variances to public water systems (other than small system variances) from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1415(a) of the Act. A State must document all findings that are required under Section 1415(a) of the Act. In States that do not have primary enforcement responsibility, variances may be granted by the Administrator pursuant to subpart E of this part.

(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, including the following:

(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, financial, 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 public water system 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. A State must document its findings in granting an extension under this paragraph.

4. The heading for Subpart E is revised to read as follows:

Subpart E—Variances Issued by the Administrator Under Section 1415(a) of the Act

5. Section 142.42 is amended by revising paragraph (c) to read as follows:

§ 142.42 Consideration of a variance request.

* * * * *

(c) A variance may be issued to a public water system on the condition that the public water 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

Administrator that indicates that alternative sources of water are not reasonably available to the public water system.

* * * * *

Subpart F—[Amended]

6. Section 142.50 is revised to read as follows:

§ 142.50 Requirements for an exemption.

(a) The Administrator may exempt any public water system within a State that does not have primary enforcement 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)(A), 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 become a part of a regional public water system.

(c) A public water system may not receive an exemption under this subpart if the public water system was granted a variance under Section 1415(e) of the Act.

7. Section 142.53 is amended by revising paragraph (c)(1) to read as follows:

§ 142.53 Disposition of an exemption request.

* * * * *

(c) * * *

(1) 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

* * * * *

8. Section 142.55 is amended by revising paragraph (b) and removing and reserving paragraph (c) to read as follows:

§ 142.55 Final schedule.

* * * * *

(b) Such schedule must require compliance with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable but not later than 3 years after the otherwise applicable compliance date established in Section 1412(b)(10) of the Act.

(c) [Reserved].

9. Section 142.56 is revised to read as follows:

§ 142.56 Extension of date for compliance.

In the case of a public water system which serves a population of not more than 3,300 persons and which needs financial assistance for the necessary improvements, an exemption granted under § 142.50(b) (1) or (2) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 additional years, if the public water system 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.

10. Subpart K is added to read as follows:

Subpart K—Variances for Small System

Sec.

Subpart K—Variances for Small System

General Provisions

§ 142.301 What is a small system variance?

Section 1415(e) of the Act authorizes the issuance of variances from the requirement to comply with a maximum contaminant level or treatment technique to systems serving fewer than 10,000 persons. The purpose of this subpart is to provide the procedures and criteria for obtaining these variances.

§ 142.302 Who can issue a small system variance?

A small system variance under this subpart may only be issued by either:

(a) A State that is exercising primary enforcement responsibility under

Subpart B for public water systems under the State's jurisdiction; or

(b) The Administrator, for any other public water systems.

§ 142.303 Which size public water systems can receive a small system variance?

(a) A State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems) may grant a small system variance to public water systems serving 3,300 or fewer persons.

(b) With the approval of the Administrator pursuant to § 142.312, a State exercising primary enforcement responsibility for public water systems may grant a small system variance to public water systems serving more than 3,300 persons but fewer than 10,000 persons.

(c) In determining the number of persons served by the public water system, the State or Administrator must include persons served by consecutive systems. A small system variance granted to a public water system would also apply to any consecutive system served by it.

§ 142.304 For which of the regulatory requirements is a small system variance available?

(a) A small system variance is not available under this subpart for a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(b) A small system variance under this subpart is otherwise only available for compliance with a requirement specifying a maximum contaminant level or treatment technique for a contaminant with respect to which;

(1) A national primary drinking water regulation was promulgated on or after January 1, 1986; and

(2) The Administrator has published a small system variance technology pursuant to Section 1412(b)(15) of the Act.

§ 142.305 When can a small system variance be granted by a State?

No small system variance can be granted by a State until the later of the following:

(a) 90 days after the State proposes to grant the small system variance;

(b) If a State is proposing to grant a small system variance to a public water system serving 3,300 or fewer persons and the Administrator objects to the small system variance, the date on which the State makes the recommended modifications or responds in writing to each objection; or

(c) If a State is proposing to grant a small system variance to a public water system serving a population more than 3,300 and fewer than 10,000 persons, the date the Administrator approves the small system variance. The Administrator must approve or disapprove the variance within 90 days after it is submitted to the Administrator for review.

Review of Small System Variance Application

§ 142.306 What are the responsibilities of the public water system, State and the Administrator in ensuring that sufficient information is available and for evaluation of a small system variance application?

(a) A public water system requesting a small system variance must ensure that accurate and correct information is available for the State or the Administrator to issue a small system variance in accordance with this subpart. A State may assist a public water system in compiling information required for the State or the Administrator to issue a small system variance in accordance with this subpart.

(b) Based upon an application for a small system variance and other information, and before a small system variance may be proposed under this subpart, the State or the Administrator must find and document the following:

(1) The public water system is eligible for a small system variance pursuant to §§ 142.303 and 142.304;

(2) The public water system cannot afford to comply, in accordance with the affordability criteria established by the Administrator or the State, with the national primary drinking water regulation for which a small system variance is sought, including by:

(i) Treatment;

(ii) Alternative sources of water supply;

(iii) Restructuring or consolidation changes, including ownership change and/or physical consolidation with another public water system; or

(iv) Obtaining financial assistance pursuant to Section 1452 of the Act or any other Federal or State program;

(3) The public water system meets the source water quality requirements for installing the small system variance technology developed pursuant to guidance published under Section 1412(b)(15) of the Act;

(4) The public water system is financially and technically capable of installing, operating and maintaining the applicable small system variance technology; and

(5) The terms and conditions of the small system variance, as developed through compliance with § 142.307, ensure adequate protection of human health, considering the following:

(i) The quality of the source water for the public water system; and

(ii) Removal efficiencies and expected useful life of the small system variance technology.

§ 142.307 What terms and conditions must be included in a small system variance?

(a) A State or the Administrator must clearly specify enforceable terms and conditions of a small system variance.

(b) The terms and conditions of a small system variance issued under this subpart must include, at a minimum, the following requirements:

(1) Proper and effective installation, operation and maintenance of the applicable small system variance technology in accordance with guidance published by the Administrator pursuant to Section 1412(b)(15) of the Act, taking into consideration any relevant source water characteristics and any other site-specific conditions that may affect proper and effective operation and maintenance of the technology;

(2) Monitoring requirements, for the contaminant for which a small system variance is sought, as specified in 40 CFR Part 141; and

(3) Any other terms or conditions that are necessary to ensure adequate protection of public health, which may include:

(i) Public education requirements; and

(ii) Source water protection requirements.

(c) The State or the Administrator must establish a schedule for the public water system to comply with the terms and conditions of the small system variance which must include, at a minimum, the following requirements:

(1) Increments of progress, such as milestone dates for the public water system to apply for financial assistance and begin capital improvements;

(2) Quarterly reporting to the State or Administrator of the public water system's compliance with the terms and conditions of the small system variance;

(3) Schedule for the State or the Administrator to review the small system variance under paragraph (d) of this section; and

(4) Compliance with the terms and conditions of the small system variance as soon as practicable but not later than 3 years after the date on which the small system variance is granted. The Administrator or State may allow up to 2 additional years if the Administrator or State determines that additional time is necessary for the public water system to:

(i) Complete necessary capital improvements to comply with the small system variance technology, secure an alternative source of water, or restructure or consolidate; or

(ii) Obtain financial assistance provided pursuant to Section 1452 of the Act or any other Federal or State program.

(d) The State or the Administrator must review each small system variance granted not less often than every 5 years after the compliance date established in the small system variance to determine whether the public water system continues to meet the eligibility criteria and remains eligible for the small system variance and is complying with the terms and conditions of the small system variance. If the public water system would no longer be eligible for a small system variance, the State or Administrator must determine whether continued adherence to the small system variance conditions is in the public interest.

Public Participation

§ 142.308 What public notice is required before a State or the Administrator proposes to issue a small system variance?

(a) At least fifteen (15) days before the date of proposal, and at least thirty (30) days prior to a public meeting to discuss the proposed small system variance, the State or the Administrator must provide notice to all consumers of the public water system. This notice identified in paragraph (a)(1) of this section must include the information listed in paragraph (c) of this section. The notice identified in paragraph (a)(2) of this section shall include the information identified in paragraph (d) of this section. Notice must be provided to such consumers by:

(1) Direct mail to billed customers; and

(2) Any other method reasonably calculated to notify, in a brief and concise manner, other persons regularly served by the system. Such methods may include publication in a local newspaper, posting in public places or delivery to community organizations.

(b) At the time of proposal, the State must publish a notice in the State equivalent to the **Federal Register** or, in the case of the Administrator, in the **Federal Register**. This notice shall include the information listed in paragraph (c) of this section.

(c) The notice in paragraphs (a)(1) and (b) of this section must include, at a minimum, the following:

(1) Identification of the contaminant[s] for which a small system variance is sought;

(2) A brief statement of the health effects associated with the contaminant[s] for which a small system variance is sought using language in Appendix B of Part 141 Subpart O of this chapter;

(3) The address and telephone number at which interested persons may obtain further information concerning the contaminant and the small system variance;

(4) A brief summary, in easily understandable terms, of the compliance options considered by the public water system and of the terms and conditions of the small system variance;

(5) A description of the consumer petition process under § 142.310 and information on contacting the EPA Regional Office;

(6) A brief statement of the purpose of the meeting, information regarding the time and location for the meeting, and the address and telephone number at which interested persons may obtain further information concerning the meeting; and

(7) In communities with a large portion of non-English speaking residents, information in the appropriate language regarding the content and importance of the notice.

(d) The notice in paragraph (a)(2) of this section must provide sufficient information to alert readers to the proposed variance and direct them where to receive additional information.

(e) At its option, the State or the Administrator may choose to issue separate notices or additional notices related to the proposed small system variance, provided that the requirements in paragraphs (a) through (d) of this section are satisfied.

(f) Prior to promulgating the final variance, the State or the Administrator must respond in writing to all significant public comments received relating to the small system variance. Response to public comment and any other documentation supporting the issuance of a variance must be made available to the public after final promulgation.

§ 142.309 What are the public meeting requirements associated with the proposal of a small system variance?

(a) A State or the Administrator must provide for at least one (1) public meeting on the small system variance no later than 15 days after the small system variance is proposed.

(b) The State or Administrator must prepare and make publicly available, in addition to the information listed in § 142.308(c), either:

(1) The proposed small system variance, if the public meeting occurs after proposal of the small system variance or;

(2) A draft of the proposed small system variance, if the public meeting occurs prior to proposal of the proposed small system variance.

(c) Notice of the public meeting must be provided in the manner required under § 142.308 at least 30 days in advance of the public meeting.

§ 142.310 How can a person served by the public water system obtain EPA review of a State proposed small system variance?

(a) Any person served by the public water system may petition the Administrator to object to the granting of a small system variance within 30 days after a State proposes to grant a small system variance for a public water system.

(b) The Administrator must respond to a petition filed by any person served by the public water system and determine whether to object to the small system variance under § 142.311, no later than 60 days after the receipt of the petition.

EPA Review and Approval of Small System Variances

§ 142.311 What procedures allow the Administrator to object to a proposed small system variance or overturn a granted small system variance for a public water system serving 3,300 or fewer persons?

(a) At the time a State proposes to grant a small system variance under this subpart, the State must submit to the Administrator the proposed small system variance and all supporting information, including any written public comments received prior to proposal.

(b) The Administrator may review and object to any proposed small system variance within 90 days of receipt of the proposed small system variance. The Administrator must notify the State in writing of each basis for the objection and propose a modification to the small system variance to resolve the concerns of the Administrator. The State must make the recommended modification, respond in writing to each objection, or withdraw the proposal to grant the small system variance.

(c) If the State issues the small system 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 the Act or this subpart.

§ 142.312 What EPA action is necessary when a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons?

(a) At the time a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting information, including public comments received prior to proposal, to the Administrator.

(b) The Administrator must approve or disapprove the small system variance within 90 days of receipt of the proposed small system variance and supporting information. The Administrator must approve the small system variance if it meets each requirement within the Act and this subpart.

(c) If the Administrator disapproves the small system variance, the Administrator must notify the State in writing of the reasons for disapproval and the small system variance does not become effective. The State may resubmit the small system variance for review and approval with modifications to address the objections stated by the Administrator.

§ 142.313 How will the Administrator review a State's program under this subpart?

(a) The Administrator must periodically review each State program under this subpart to determine whether small system variances granted by the State comply with the requirements of the Act, this subpart and the affordability criteria developed by the State.

(b) If the Administrator determines that small system variances granted by a State are not in compliance with the requirements of the Act, this subpart or the affordability criteria developed by the State, the Administrator shall notify the State in writing of the deficiencies and make public the determinations.

(c) The Administrator's review will be based in part on quarterly reports prepared by the States pursuant to § 142.15(a)(1) relating to violations of increments of progress or other violated terms or conditions of small system variances.

[FR Doc. 98–10393 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 395

[Docket No. FHWA–98–3706]

RIN 2125–AD52

Hours of Service of Drivers; Supporting Documents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend the hours-of-service (HOS) recordkeeping requirements of its regulations. The Hazardous Materials Transportation Authorization Act of 1994 mandated that amendments be made to these regulations. The FHWA, with this NPRM, proposes a supporting document auditing system that all motor carriers would use to support the accuracy of the drivers' Records of Duty Status (RODS) and Hours of Service (HOS). Additionally, this NPRM would specify that failure to have such a system would require the motor carrier to maintain various types of business documents and all drivers employed by that motor carrier to collect and submit such documents in order to support the accuracy of the drivers' RODS. The proposed auditing systems and document retention proposal would enable the motor carriers, Federal, State, and local enforcement officials to compare business documents with drivers' records of duty status to monitor drivers' compliance with the HOS and RODS requirements. This proposed rule would require drivers and motor carriers to make use of documents generated or received in the normal course of business to verify the accuracy of a driver's record of duty status. The use of electronic recordkeeping methods is proposed as a preferred alternative to paper supporting document records.

DATES: Comments should be received by June 19, 1998.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

For Internet users, all comments received will be available for examination at the universal resource locator—*http://dms.dot.gov*—24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

FOR FURTHER INFORMATION CONTACT: *For information regarding program issues:* Mr. David Miller, Office of Motor Carrier Research and Standards, (202) 366–4009, or *for information regarding legal issues:* Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

The Difference Between This RIN 2125–AD52 and RIN 2125–AD93

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. This NPRM is the first document being published for RIN 2125–AD52. Use this RIN when cross referencing this action with the Unified Agenda.

This document is not an NPRM for RIN 2125–AD93, Hours of Service of Drivers. The FHWA published an ANPRM on November 5, 1996 for RIN 2125–AD93 (61 FR 57251). The FHWA is analyzing the comments for RIN 2125–AD93 and will publish an NPRM in the future based upon those comments and the accompanying scientific data.

The FHWA will likely incorporate this NPRM, or any final rule resulting from this NPRM, into the upcoming NPRM for RIN 2125–AD93. Please limit your analysis, though, and any comments you may have, to how this NPRM would affect the current 49 CFR part 395. Please do not comment on how these changes might affect RIN 2125–AD93 and the ICC Termination Act of 1995. You will be given an additional opportunity to comment at the time the FHWA publishes the NPRM for RIN 2125–AD93.

Electronic Availability

An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office (GPO) electronic bulletin board service (telephone: 202–512–1661). Internet users may reach the GPO's web page at: http://www.access.gpo.gov/su__docs/aces/aaces002.html