

**SECTION .1600 - VARIANCES AND EXEMPTIONS****15A NCAC 18C .1601 REQUIREMENTS FOR A VARIANCE**

(a) The Secretary may grant one or more variances to any public water system within the state from any requirement respecting a maximum contaminant level of an applicable rule of 15A NCAC 18C Section .1500 upon a finding that:

- (1) Because of characteristics of the raw water sources which are reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulations despite application of the best technology, treatment techniques, or other means, which the Secretary, with the concurrence of the administrator, finds are generally available (taking costs into consideration); and
- (2) The granting of a variance will not result in an unreasonable risk to the health of persons served by the system.

(b) The Secretary may grant one or more variances to any public water system within the state from any requirement of a specified treatment technique of an applicable rule of 15A NCAC 18C Section .1500 upon finding that the public water system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such systems.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. September 1, 1979;*

*Amended Eff. December 19, 1979;*

*Transferred and Recodified from 10 NCAC 10D .2501 Eff. April 4, 1990;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

**15A NCAC 18C .1602 VARIANCE REQUEST**

A supplier of water may request a variance for a public water system by submitting a written request to the Secretary. Suppliers of water may submit a joint request for variances when they seek similar variances under similar circumstances. A request for a variance or variances shall include the following information:

- (1) the nature and duration of variance requested;
- (2) relevant analytical results of water quality sampling of the system, including results of relevant tests conducted pursuant to the rules of 15A NCAC 18C Section .1500;
- (3) for any request made under .1601(a) of this Section:
  - (a) explanation in full and evidence of the best available treatment technology and techniques;
  - (b) economic and legal factors relevant to ability to comply;
  - (c) analytical results of raw water quality relevant to ability to comply;
  - (d) a proposed compliance schedule, including the date each step toward compliance will be achieved; Such schedule shall include as a minimum the following dates:
    - (i) date by which arrangement for alternative raw water source or improvement of existing raw water source will be completed,
    - (ii) date of initiation of the connection of the alternative raw water source or improvement of existing raw water source,
    - (iii) date by which final compliance is to be achieved;
  - (e) a plan for the provision of safe drinking water in the case of an excessive rise in the contaminant level for which the variance is requested;
  - (f) a plan for interim control measures during the effective period of variance;
- (4) for any request made under .1601(b) of this Section, a statement that the system will perform monitoring and other reasonable requirements prescribed by the Secretary as a condition to the variance;
- (5) other information, if any, believed to be pertinent by the applicant;
- (6) such other information as the Secretary may require.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. September 1, 1979;*

*Transferred and Recodified from 10 NCAC 10D .2502 Eff. April 4, 1990;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

**15A NCAC 18C .1603 CONSIDERATION OF A VARIANCE REQUEST**

(a) The Secretary shall act on any variance request submitted pursuant to .1602 of this Section within 90 days of receipt of the request.

(b) In consideration of whether the public water system is unable to comply with a contaminant level required by 15A NCAC 18C Section .1500 because of the nature of the raw water source, the Secretary shall consider such factors as the following:

- (1) the availability and effectiveness of treatment methods for the contaminant for which the variance is requested;
- (2) cost and other economic considerations such as implementing treatment, improving the quality of the source water or using an alternate source.

(c) In consideration of whether a public water system should be granted a variance to a required treatment technique because such treatment is unnecessary to protect the public health, the Secretary shall consider such factors as the following:

- (1) quality of the water source including water quality data and pertinent sources of pollution,
- (2) source protection measures employed by the public water system.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. September 1, 1979;*

*Transferred and Recodified from 10 NCAC 10D .2503 Eff. April 4, 1990;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

**15A NCAC 18C .1604 DISPOSITION OF A VARIANCE REQUEST**

(a) If the Secretary decides to deny the application for a variance, the applicant shall be notified of the intention to issue a denial. Such notice shall include a statement of reasons for the proposed denial. Within 30 days after the receipt of such notice, the applicant may request a hearing for the purpose of contesting the proposed denial. Such hearing shall be conducted in the manner set forth in G.S. 150B-22 through 150B-37. If no hearing is requested by the applicant within the 30 day period, the application shall be denied.

(b) If the Secretary proposes to grant a variance request submitted pursuant to .1602 of this Section, the applicant shall be notified of the decision in writing. Such notice shall identify the variance, the facility covered, and shall specify the period of time for which the variance will be effective:

- (1) For the type of variance specified in .1601(a) of this Section, such notice shall provide that the variance will be terminated when the system comes into compliance with the applicable regulation, and may be terminated upon a finding by the Secretary that the system has failed to comply with any requirements of a final schedule issued pursuant to .1605 of this Section.
- (2) For the type of variance specified in .1601(b) of this Section, such notice shall provide that the variance may be terminated at any time upon a finding that the nature of the raw water source is such that the specified treatment technique for which the variance was granted is necessary to protect the health of persons or upon a finding that the public water system has failed to comply with monitoring and other requirements prescribed by the Secretary as a condition to the granting of the variance.

(c) For a variance specified in .1601(a)(1) of this Section, the Department shall propose a schedule for:

- (1) compliance (including increments of progress) by the public water system with each contaminant level requirement covered by the variance, and
- (2) implementation by the public water system of such control measures as the Department may require for each contaminant covered by the variance.

(d) The proposed schedule for compliance shall specify dates by which steps towards compliance are to be taken, including at the minimum, where applicable:

- (1) date by which arrangement for an alternative raw water source or improvement of existing raw water source will be completed,
- (2) date of initiation of the connection for the alternative raw water source or improvement of the existing raw water source,
- (3) date by which final compliance is to be achieved.

(e) The proposed schedule may, if the public water system has no access to an alternative raw water source, and can effect or anticipate no adequate improvement of the existing raw water source, specify an indefinite time period for

compliance until a new and effective treatment technology is developed at which time a new compliance schedule shall be prescribed by the Secretary.

(f) The proposed schedule for implementation of interim control measures during the period of variance shall specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting the interim control measures are to be met.

(g) The schedule shall be prescribed by the secretary within one year after the granting of the variance, subsequent to provision of opportunity for hearing pursuant to .1605 of this Section.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. September 1, 1979;*

*Transferred and Recodified from 10 NCAC 10D .2504 Eff. April 4, 1990;*

*Amended Eff. September 1, 1991;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

### **15A NCAC 18C .1605 PUBLIC HEARINGS ON VARIANCES AND SCHEDULES**

(a) Before a variance or a schedule proposed by the Secretary pursuant to Rule.1604 of this Section may take effect, the Secretary shall provide notice and opportunity for public hearing on the variance or schedule. Such notice may cover the granting of more than one variance, and a hearing held pursuant to such notice shall include each of the variances covered by that notice.

(b) Public notice of an opportunity for hearing on a variance or schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed variance or schedule and shall include the following minimum requirements:

- (1) posting of a notice in the principal post office of each municipality or area served by the public water system, and publishing of a notice in a newspaper or newspapers of general circulation in the area served by the public water system;
- (2) mailing of a notice to the Public Water Supply Section, Division of Water Resources and to other appropriate state or local agencies at the Department's discretion; and
- (3) such notice shall include a summary of the proposed variance or schedule and shall inform interested persons that they may request a public hearing on the proposed variance or schedule.

(c) Requests for hearing may be submitted by any interested person. Frivolous or insubstantial requests for hearing may be denied by the Secretary. Requests shall be submitted to the Secretary within 30 days after issuance of the public notice provided for in Paragraph (b) of this Rule. Such requests shall include the following information:

- (1) the name, address and telephone number of the individual, organization or other entity requesting a hearing;
- (2) a brief statement of the interest of the individual, organization or other entity making the request in the proposed variance or schedule and of information that the requestor intends to submit at such hearing; and
- (3) the signature of the individual making the request or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

(d) Any hearing held pursuant to a request submitted by an individual, organization or other entity or on the Secretary's own motion shall be conducted in the manner set forth in G.S. 150B-22 through 150B-37.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. September 1, 1979;*

*Transferred and Recodified from 10 NCAC 10D .2505 Eff. April 4, 1990;*

*Amended Eff. April 1, 2014; September 1, 1991;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

### **15A NCAC 18C .1606 VARIANCES FOR FLUORIDE**

(a) The following shall be the best technology, treatment techniques or other means generally available for achieving compliance with the maximum contaminant level for fluoride:

- (1) Activated alumina absorption, centrally applied,
- (2) Reverse osmosis, centrally applied.

(b) The Division shall require a community water system to install and/or use any treatment method identified in (a) of this Rule as a condition for granting a variance unless it is determined that such a treatment method is not available and effective for fluoride control for the system. A treatment method shall not be available and effective for a water system if the method would not be technically appropriate and technically feasible. If upon application for a variance it is determined that no treatment method is available and effective then the water system shall be entitled to a variance. A determination of availability and effectiveness of treatment methods shall be based upon studies by the water system and other relevant information. A finding shall be made by the Division whether the information supports a decision that a treatment method is not available and effective before requiring installation and use of the treatment method.

(c) The Division shall issue a compliance schedule that may require the water system to examine the following treatment methods to determine the probability that any method will significantly reduce the level of fluoride and to determine whether any method is technically feasible and economically reasonable and that the fluoride reduction obtained will be commensurate with the costs incurred with installation and use of the treatment methods:

- (1) Modification of lime softening;
- (2) Alum coagulation;
- (3) Electrodialysis;
- (4) Anion exchange resins;
- (5) Well field management;
- (6) Alternate source; and
- (7) Regionalization.

(d) If the Division determines that a treatment method identified in (c) of this Rule or any other treatment method is technically feasible, economically reasonable, and will achieve fluoride reductions commensurate with the costs incurred with the installation and use of such treatment method for the system, the Division shall require the system to install and/or use that treatment method in connection with a compliance schedule. The determination shall be based upon studies by the system and other relevant information.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. October 1, 1986;*

*Transferred and Recodified from 10 NCAC 10D .2512 Eff. April 4, 1990;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

#### **15A NCAC 18C .1607 VARIANCES AND EXEMPTIONS FOR CHEMICALS, LEAD AND COPPER, AND RADIONUCLIDES**

(a) The provisions of 40 C.F.R. 142.62 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

(b) The provisions of 40 C.F.R. 142.65 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

*History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 142;*

*Eff. June 1, 1988;*

*Transferred and Recodified from 10 NCAC 10D .2514 Eff. April 4, 1990;*

*Amended Eff. April 1, 2014; August 1, 2002; October 1, 1992;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

#### **15A NCAC 18C .1608 REQUIREMENTS FOR AN EXEMPTION**

The Secretary may exempt any public water system in the state from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable rule of this Subchapter upon a finding that:

- (1) Due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement;
- (2) The public water system was in operation on the effective date of federal promulgation of such contaminant level or treatment technique requirement; and
- (3) The granting of the exemption will not result in an unreasonable risk to health.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. September 1, 1979;*  
*Amended Eff. December 19, 1979;*  
*Transferred and Recodified from 10 NCAC 10D .2506 Eff. April 4, 1990;*  
*Amended Eff. July 1, 1993;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

#### **15A NCAC 18C .1609 EXEMPTION REQUEST**

A supplier of water may request an exemption for a public water system by submitting a written request to the Secretary. Suppliers of water may submit a joint request for exemptions when they seek similar exemptions under similar circumstances. Any request for an exemption or exemptions shall include the following information:

- (1) the nature and duration of exemption requested;
- (2) relevant analytical results of water quality sampling of the system, including results of relevant tests conducted pursuant to the requirements of the drinking water regulations;
- (3) explanation of the compelling factors such as time or economic factors which prevent such system from achieving compliance;
- (4) other information, if any, believed by the applicant to be pertinent to the application;
- (5) a proposed compliance schedule, including the date when each step toward compliance will be achieved;
- (6) such other information as the Secretary may require.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*  
*Eff. September 1, 1979;*  
*Transferred and Recodified from 10 NCAC 10D .2507 Eff. April 4, 1990;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

#### **15A NCAC 18C .1610 CONSIDERATION OF AN EXEMPTION REQUEST**

- (a) The Secretary shall act on any exemption request submitted pursuant to .1609 of this Section within 90 days of receipt of the request.
- (b) In consideration of whether the public water system is unable to comply due to compelling factors, the Secretary shall consider such factors as the following:
  - (1) construction, installation, or modification of treatment equipment or systems;
  - (2) the time needed to put into operation a new treatment facility to replace an existing system which is not in compliance;
  - (3) economic feasibility of compliance.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*  
*Eff. September 1, 1979;*  
*Transferred and Recodified from 10 NCAC 10D .2508 Eff. April 4, 1990;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

#### **15A NCAC 18C .1611 DISPOSITION OF AN EXEMPTION REQUEST**

- (a) If the Secretary decides to deny the application for an exemption, the applicant shall be notified of the intention to issue a denial. Such notice shall include a statement of reasons for the proposed denial. Within 30 days after the receipt of such notice, the applicant may request a hearing for the purpose of contesting the proposed denial. Such hearing shall be conducted in the manner set forth in G.S. 150B-22 through 150B-37. If no hearing is requested by the applicant within the 30 day period, the application shall be denied.
- (b) If the Secretary grants an exemption request submitted pursuant to .1609 of this Section, the applicant shall be notified of the decision in writing. Such notice shall identify the facility covered and shall specify the termination date of the exemption. Such notice shall provide that the exemption will be terminated when the system comes into compliance with the applicable rule, and may be terminated upon a finding by the Secretary that the system has failed to comply with any requirements of a final schedule issued pursuant to .1613 of this Section.
- (c) The Secretary shall propose a schedule for:

- (1) compliance (including increments of progress) by the public water system with each contaminant level requirement and treatment technique requirement covered by the exemption, and
  - (2) implementation by the public water system of such control measures as the Secretary may require for each contaminant covered by the exemption.
- (d) The schedule shall be prescribed by the secretary within one year after the granting of the exemption, subsequent to provision of opportunity for hearing pursuant to .1612 of this Section.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. September 1, 1979;*

*Transferred and Recodified from 10 NCAC 10D .2509 Eff. April 4, 1990;*

*Amended Eff. September 1, 1991;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

#### **15A NCAC 18C .1612 PUBLIC HEARINGS ON EXEMPTION SCHEDULES**

- (a) Before a schedule proposed by the Secretary pursuant to Rule.1611 of this Section may take effect, the Secretary shall provide notice and opportunity for public hearing on the schedule. Such notice may cover the proposal of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.
- (b) Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall include the following minimum requirements:
- (1) posting of a notice in the principal post office of each municipality or area served by the public water system, and publishing a notice in the newspaper or newspapers of general circulation in the area served by the public water system;
  - (2) mailing of a notice to the Public Water Supply Section, Division of Water Resources and to other appropriate state or local agencies at the Secretary's discretion; and
  - (3) such notices shall include a summary of the proposed schedule and shall inform interested persons that they may request a public hearing on the proposed schedule.
- (c) Requests for hearing may be submitted by any interested person. Frivolous or insubstantial requests for hearing may be denied by the Secretary. Requests shall be submitted to the Secretary within 30 days after issuance of the public notices provided for in Paragraph (b) of this Rule. Such requests shall include the following information:
- (1) the name, address and telephone number of the individual, organization or other entity requesting a hearing;
  - (2) a brief statement of the interest of the individual, organization or other entity making the request in the proposed schedule and of information that the requestor intends to submit at such hearing; and
  - (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.
- (d) Any hearing held pursuant to a request submitted by an individual, organization or other entity or on the Secretary's own motion shall be conducted in the manner set forth in G.S. 150B-22 through 150B-37.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. September 1, 1979;*

*Transferred and Recodified from 10 NCAC 10D .2510 Eff. April 4, 1990;*

*Amended Eff. April 1, 2014; December 1, 1991;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

#### **15A NCAC 18C .1613 FINAL SCHEDULE**

- (a) Within a reasonable time after the termination of a hearing conducted in the manner set forth in G.S. 150B-22 through 150B-37, the Secretary shall, based upon consideration of the hearing record as a whole, revise the proposed schedule as necessary and prescribe the final schedule for compliance and interim measures for the public water system granted an exemption under .1609 of this Section.
- (b) Such schedule shall require compliance by the public water system with each contaminant level and treatment technique requirement prescribed by:

- (1) regulations in 15A NCAC 18C Section .1500 adopted on or before September 1, 1979, by no later than January 1, 1981; and
  - (2) amendments to 15A NCAC 18C adopted after September 1, 1979, by no later than seven years after the effective date of the revised National Primary Drinking Water Regulations.
- (c) If the public water system has entered into an enforceable agreement to become a part of a regional public water system, as determined by the Secretary, such schedule shall require compliance by the public water system with each contaminant level and treatment technique requirement prescribed by:
- (1) regulations in 15A NCAC 18C Section .1500 adopted on or before September 1, 1979, by no later than January 1, 1983; and
  - (2) amendments to 15A NCAC 18C Section .1500 adopted after September 1, 1979, by no later than nine years after the effective date of the revised National Primary Drinking Water Regulations.

*History Note: Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142;*

*Eff. September 1, 1979;*

*Amended Eff. December 19, 1979;*

*Transferred and Recodified from 10 NCAC 10D .2511 Eff. April 4, 1990;*

*Amended Eff. September 1, 1991;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*

#### **15A NCAC 18C .1614 BOTTLED WATER AND POINT-OF-USE DEVICES**

The provisions of 40 C.F.R. 142.57 are hereby incorporated by reference including any subsequent amendments and editions. Copies are available for public inspection as set forth in Rule .0102 of this Subchapter.

*History Note: Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 142;*

*Eff. June 1, 1988;*

*Transferred and Recodified from 10 NCAC 10D .2513 Eff. April 4, 1990;*

*Amended Eff. April 1, 2014; October 1, 1992; December 1, 1988;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*