

**§ 130A-321. Variances and exemptions; considerations; duration; condition; notice and hearing.**

- (a) The Secretary may authorize variances from the drinking water rules.
  - (1) The Secretary may grant one or more variances to a public water system from any requirement respecting a maximum contaminant level of an applicable drinking water rule upon a finding that:
    - a. Because of characteristics of the raw water sources reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels of the drinking water rules after application of the best technology, treatment techniques, or other means which the Secretary finds are available (taking costs into consideration); and
    - b. The granting of a variance will not result in an unreasonable risk to public health when considering the population exposed, the projected duration of the requested variance and the degree to which the maximum contaminant level is being or will be exceeded.
  - (2) The Secretary may grant one or more variances to a public water system from any requirement of a specified treatment technique of an applicable drinking water rule upon a finding that the public water system applying for the variance has demonstrated that the treatment technique is not necessary to protect the public health because of the nature of the raw water source of the system.
  - (3) In consideration of whether the public water system is unable to comply with a contaminant level required by the drinking water rules because of the nature of the raw water sources, the Secretary shall consider factors such as:
    - a. The availability and effectiveness of treatment methods for the contaminant for which the variance is requested; and
    - b. Costs of implementing the best treatment(s), improving the quality of the raw water by the best means or using an alternate source.
  - (4) In consideration of whether a public water system should be granted a variance from a required treatment technique because the treatment is unnecessary to protect the public health, the Secretary shall consider factors such as:
    - a. Quality of the water source including water quality data and pertinent sources of pollution; and
    - b. Source protection measures employed by the public water system.
  - (5) In order to implement sub-subdivision a. of subdivision (1) of this subsection, the Commission shall adopt by rule a list of the best available technologies, treatment techniques, or other means available, to deal with each contaminant for which a maximum contaminant level is established.
- (b) The Secretary may authorize exemptions from the drinking water rules.
  - (1) The Secretary may exempt a public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable drinking water rule upon a finding that:
    - a. Due to compelling factors, including economic factors, the public water system is unable to comply with the contaminant level or treatment technique requirement;

- b. The public water system was in operation on the effective date of the contaminant level or treatment technique requirement or, for a system that was not in operation on that date, only if no reasonable alternative source of drinking water is available to the new system; and
  - c. The granting of the exemption will not result in an unreasonable risk to public health when considering the population exposed, the projected duration of the requested exemption and the degree to which the maximum contaminant level is being or will be exceeded.
- (2) In consideration of whether the public water system is unable to comply due to compelling factors, the Secretary shall consider factors such as:
- a. Construction, installation or modification of treatment equipment or systems;
  - b. The time needed to put into operation a new treatment facility to replace an existing system which is not in compliance; and
  - c. Economic feasibility of immediate compliance.

(c) As a condition of issuance of either a variance or an exemption, the Secretary shall issue a schedule of compliance for the public water system, including increments of progress for each drinking water rule for which the variance or exemption was issued. As a further condition of a variance or exemption, the Secretary shall require the public water system to implement any necessary control measures prescribed by the Secretary during the period of the variance or exemption. The compliance schedule for an exemption shall require compliance as expeditiously as practical but no later than June 19, 1987, for existing maximum contaminant levels and treatment techniques, or no later than one year from the issuance of the exemption for any newly adopted maximum contaminant level or treatment technique. The final date for compliance provided in any exemption schedule may be extended up to three years after the date of the issuance of the exemption if the water system establishes:

- (1) The water system cannot meet the standard without capital improvements which cannot be completed within the period of exemption, or
- (2) The system needs financial assistance for necessary improvements and has entered into an agreement to obtain such assistance, or
- (3) The system has entered into an enforceable agreement to become part of a regional public water system and the system is taking all practical steps to meet the standard.

If a public water system serves 500 or fewer service connections and needs financial assistance for necessary improvements, an exemption may be renewed for one or more additional two-year periods if the system establishes it meets the requirements set forth in subdivisions (1) and (2) of this section.

(d) The Secretary shall provide notice and opportunity for public hearing on proposed variances and proposed variance and exemption schedules. (1979, c. 788, s. 1; 1981, c. 353, ss. 1, 2; 1983, c. 891, s. 2; 1987, c. 704, ss. 3-5.)