

§ 142.304

(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.

NOTE TO PARAGRAPH (b)(1): Small system variances are not available for public water systems above the pre-1986 maximum contaminant level even if subsequently revised. If the Agency revises a pre-1986 maximum contaminant level and makes it more stringent, then a variance would be available for that contaminant, but only up to the pre-1986 maximum contaminant level.

§ 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

40 CFR Ch. I (7-1-07 Edition)

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 provide accurate and correct information to 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 (*i.e.*, the system serves a population of fewer than 10,000 persons) and 142.304 (*i.e.*, the contaminant for which the small system variance is sought is not excluded from variance eligibility);

(2) The public water system cannot afford to comply, in accordance with the affordability criteria established by the State (or by the Administrator in States which do not have primary enforcement responsibility), 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 the Administrator must determine whether continuing the variance is in the public interest. If the State or the Administrator finds that continuing the variance is not in the public interest, the variance must be withdrawn.