

Variances and Exemptions: A Quick Reference Guide



Overview of the Rule

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Title*	<i>Variances and Exemptions Rule, 63 FR 43834-43851, August 14, 1998</i>	
	<i>General and Small System Variances</i>	<i>Exemptions</i>
Purpose	Variances allow eligible systems to provide drinking water that does not comply with a National Primary Drinking Water Regulation (NPDWR) on the condition that the system installs a certain technology and the quality of the drinking water is still protective of public health.	Exemptions allow eligible systems additional time to build capacity in order to achieve and maintain regulatory compliance with newly promulgated NPDWRs, while continuing to provide acceptable levels of public health protection.
General	There are two types of variances: <ol style="list-style-type: none"> 1. General variances are intended for systems that are not able to comply with a NPDWR due to their source water quality. 2. Small system variances are intended for systems serving 3,300 persons or fewer that cannot afford to comply with a NPDWR (but may be allowed for systems serving up to 10,000 persons). 	Exemptions do not release a water system from complying with NPDWRs; rather, they allow water systems additional time to comply with NPDWRs.
Compliance Date	<i>General variances</i> require compliance as expeditiously as practicable and in accordance with a compliance schedule determined by the State. <i>Small system variances</i> require compliance within 3 years (with a possible 2-year extension period).	Systems must achieve compliance as expeditiously as practicable and in accordance with the schedule determined by the State. In addition: <ul style="list-style-type: none"> • Initial exemptions cannot exceed 3 years. • Systems serving < 3,301 persons may be eligible for one or more additional 2-year extension periods (not to exceed 6 years).
Contaminants Excluded	<ul style="list-style-type: none"> • <i>General variances</i> may generally not be granted for the maximum contaminant level (MCL) for total coliforms or any of the treatment technique (TT) requirements of Subpart H of 40 CFR 141. Exemptions from the MCL for total coliforms may generally not be granted. • <i>Small system variances</i> may not be granted for NPDWRs promulgated prior to 1986 or MCLs, indicators, and TTs for microbial contaminants. 	<ul style="list-style-type: none"> • Exemptions from the MCL for total coliforms may generally not be granted.
<p>*This document provides a summary of federal drinking water requirements; to ensure full compliance, please consult the federal regulations at 40 CFR 141 and any approved state requirements.</p>		

Utilities Covered

All public water systems	Exclusions: <ul style="list-style-type: none"> • Systems that have received a small system variance are not eligible for an exemption. • Small system variances may not be granted for NPDWRs that do not list a small system variance technology (SSVT). • Systems that have received an exemption are generally not eligible for a variance.
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Definitions

State	For purposes of this document, "State" is used to refer to the primacy agency.
Best Available Technology (BAT)	The BAT, TT, or other means identified by EPA for use in complying with a NPDWR.
Small System Variance Technology (SSVT)	A treatment technology identified by EPA specifically for use by a small public water system that will achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of its source water, while adequately protecting public health.
Small System Compliance Technology (SSCT)	A treatment technology that is affordable by small systems and allows systems to achieve compliance with the requirements of a NPDWR.

For additional information:

- Call the Safe Drinking Water Hotline at 1-800-426-4791.
- Visit the EPA Web site at <http://water.epa.gov/drink>.
- Contact your State's drinking water representatives.

Rule-Related Activities and Responsibilities

Systems		States
General and Small System Variances	<ul style="list-style-type: none"> May apply for, if eligible and unable to meet the NPDWR. Work with the State to hold a public hearing on the proposed variance. Meet all compliance criteria, including schedule set by the State, once the variance is approved. Must provide public notice within 1 year after the system begins operating under the variance. 	<ul style="list-style-type: none"> Review the system's application to determine whether the system meets all eligibility criteria. Before issuing a variance, determine a schedule for compliance and implementation. Work with the system to hold a public hearing on the variance and notify EPA of all variances.
Additional Activities for Small System Variances	<ul style="list-style-type: none"> May apply for only if EPA has identified an SSVT for the rule. Work with the State to provide notice of the proposed variance to all persons served by the system. 	<ul style="list-style-type: none"> Determine whether the system is financially and technically able to install and operate an EPA-approved SSVT. Work with the system to provide notice of the proposed variance to all persons served by the system and EPA. Review all small system variances every 5 years.
Exemptions	<ul style="list-style-type: none"> May apply for, if eligible and unable to meet the NPDWR. Work with the State to hold a public hearing on the proposed exemption. Upon approval, must meet all compliance criteria and comply with the NPDWR within 3 years. (Note: systems serving <3,301 persons may be eligible for an extension). Systems must provide public notice within 1 year after the system begins operating under the exemption. 	<ul style="list-style-type: none"> Review the system's application to determine whether the system meets all eligibility criteria. Before issuing an exemption, determine a schedule for compliance and implementation. Work with the system to hold a public hearing on the exemption and notify EPA of all exemptions.

General Variances

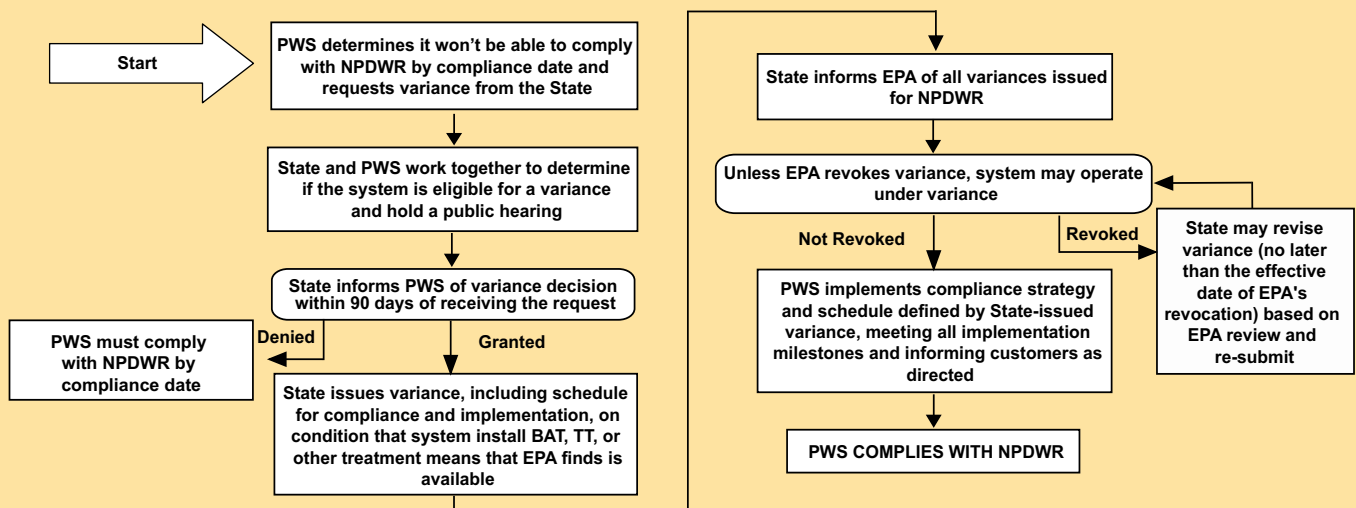
Eligibility Requirements

No Alternative Water Source	Using raw water sources that are reasonably available, the system is unable to meet MCLs (SDWA §1415(a)(1)(A) and 40 CFR 142.40(a)(1)).
Does Not Pose an URTH	The State must determine that the granting of the variance will not pose an unreasonable risk to health (URTH) (SDWA §1415(a)(1)(A) and 40 CFR 142.40(a)(2)).

Compliance Requirements

Compliance Date	Systems must comply with the NPDWR as soon as practicable and in accordance with a compliance schedule determined by the State (SDWA §1415(a)(1)(A) and 40 CFR 142.41(c)(4)).
Technology Improvements	The system must install and operate the BAT, TT, or other means found available by EPA as expeditiously as possible (SDWA §1415(a)(1)(A) and 40 CFR 142.42(c)).
Public Hearing	Before a variance may take effect, the State must provide notice and opportunity for a public hearing on the variance and schedule (SDWA §1415(a)(1)(A) and 40 CFR 142.44).
Public Notification	Systems must provide public notice within 1 year after the system begins operating under a variance and repeat the notice annually for the duration of the variance (40 CFR 141.204(b)(1)).

Example Application Process: General Variances



Small System Variances

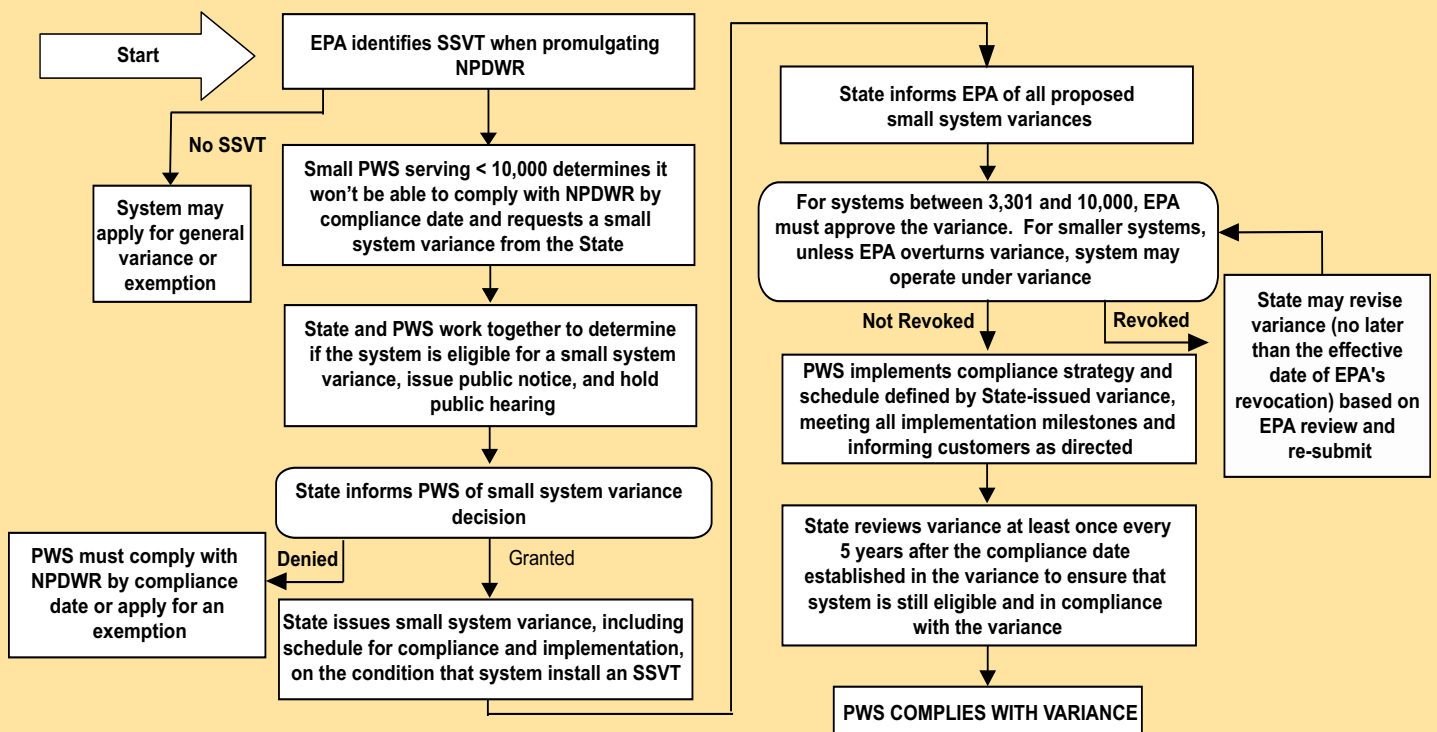
Eligibility Requirements

System Size	Generally available for systems serving < 3,301 persons and, with the approval of EPA, systems serving >3,300 persons but <10,000 persons (SDWA §1415(e)(1)(A)&(B) and 40 CFR 142.303(a)&(b)).
SSVT	Systems must install, operate, and maintain in accordance with guidance or regulations issued by the EPA Administrator, a TT or other means that EPA has identified as a variance technology that is applicable to the size and source water quality conditions of the system (SDWA §1415(e)(2)(A)&(B) and 40 CFR 142.307(b)).
Affordability	In accordance with the affordability criteria established by the State, the system cannot afford to comply with the NPDWR for which a small system variance is sought, including compliance through (SDWA §1415(e)(3) and 40 CFR 142.306(b)(2)): <ul style="list-style-type: none"> • Treatment • Alternate source of water supply • Restructuring or consolidation changes • Financial assistance
Ensure Adequate Protection of Human Health	The terms of the small system variance must ensure adequate protection of human health given source water quality, removal efficiencies, and the expected useful life of the SSVT (SDWA §1415(e)(3)(B) and 40 CFR 142.306(b)(5)).

Compliance Requirements

Compliance Date	Systems must comply with the terms of the small system variance within 3 years, unless the State allows up to an additional 2 years to make capital improvements. The State must review each variance at least once every 5 years to determine whether the system remains eligible (SDWA §1415(e)(4)&(5) and 40 CFR 142.307(c)(4)&(d)).
Technology Improvements	Systems must install an SSVT no later than 3 years (with a possible 2-year extension period) after the issuance of the variance and must be financially and technically capable of installing, operating, and maintaining the SSVT (40 CFR 142.306(b)(3)&(4)).
Public Hearing	Before a small system variance may take effect, the State must work with the system to provide public notice to everyone served by the system. Public notice must be issued 15 days before the proposed effective date and 30 days prior to a public meeting (40 CFR 142.308(a)).
Public Notification	Systems must provide public notice within 1 year after the system begins operating under a variance and repeat the notice annually for the duration of the small system variance (40 CFR 141.204(b)(1)).

Example Application Process: Small System Variances



Exemptions

Eligibility Requirements

No Alternative Water Source	The system is unable to comply with the NPDWR due to compelling factors (which may include economic factors) or to implement measures to develop an alternative source of water supply to achieve compliance (SDWA §1416(a)(1) and 40 CFR 142.50(a)(1)).
Does Not Pose An URTH	The State must make a determination that the exemption will not pose an URTH and may require interim compliance measures (SDWA §1416(a)(3) and 40 CFR 142.50(a)(3)).
System Operation	Systems must have begun operation prior to the effective date of the NPDWR, however, this requirement may be waived if the system does not have an alternative source of water supply (SDWA §1416(a)(2) and 40 CFR 142.50(a)(2)).
Management or Restructuring Changes	The system cannot reasonably make management or restructuring changes that would result in compliance or improved quality of the drinking water (SDWA §1416(a)(4) and 40 CFR 142.50(a)(4)).
Unable to Achieve Compliance	<p>No exemption shall be granted unless (SDWA §1416(b)(2)(B) and 40 CFR 142.50(b)(1),(2)&(3)):</p> <ul style="list-style-type: none"> • Capital improvements are unable to be completed before the NPDWR effective date -or- • A system that needs financial assistance has entered into an agreement to obtain that assistance -or- • The system has entered into an enforceable agreement to become part of a regional public water system; and the system is taking all appropriate steps to meet the standard.

Compliance Requirements

Duration	<p>Systems must achieve compliance with the MCL as expeditiously as practicable and in accordance with a compliance schedule determined by the State, but no longer than 3 years from the date of issuance (SDWA §1416(b)(2)(A) and 40 CFR 142.56).</p> <p>Systems serving <3,301 persons may be eligible for an additional one or more 2-year periods, but the total duration of the exemption extensions may not exceed 6 years (SDWA §1416(b)(2)(C) and 40 CFR 142.56).</p>
Public Hearing	Before an exemption can take effect, the State must provide notice and opportunity for a public hearing on the exemption schedule (SDWA §1416(b)(1)(B) and 40 CFR 142.54(a)).
Public Notification	Systems must provide public notice within 1 year after the system begins operating under an exemption and must repeat the notice annually for the duration of the exemption (40 CFR 141.204(b)(1)).

Example Application Process: Exemptions

