

# NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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## PART Env-Dw 721 EXEMPTIONS

### Env-Dw 721.01 Definitions.

(a) “Exemption” means an exception from compliance to allow a public water system extra time to comply with a new national primary drinking water regulation, as described in 42 U.S.C. 300g-5.

(b) “Unreasonable risk to health” means a situation where:

- (1) The MCL for E. coli, nitrate, or nitrite would be exceeded;
- (2) The MCL for any other contaminant would be exceeded by a factor of 5 or more; or
- (3) If no MCL has been established, the health risk posed by the expected conditions would exceed a reasonable risk as determined using epidemiological studies.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

Env-Dw 721.02 Exemptions. The department shall issue exemptions from the requirements of these drinking water rules as specified in 40 CFR 142 Subparts C and F, as applicable.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

Env-Dw 721.03 Criteria for Granting an Exemption. The department shall exempt the owner of any public water system from any requirement respecting a maximum contaminant level (MCL) or any treatment technique requirement, or from both, established by an applicable drinking water rule upon determining that:

(a) The owner of the public water system is unable to comply with such MCL or treatment technique requirement by the established deadline because:

- (1) The owner of the system will not be able to raise sufficient funds to install and use the required treatment technique or some other treatment method that would be adequate to meet the MCL prior to the deadline, due to factors beyond the owner’s control;
- (2) The owner of the system has a long-term improvement plan that will render the need for such treatment technique unnecessary within the pay-back period for the financial investment needed to install and operate such treatment technique in the interim; or
- (3) Other circumstances exist which demonstrate that the benefit to be derived by meeting the MCL or installing the required treatment technique is outweighed by the cost of doing so;

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(b) The public water system was in operation on the effective date of such MCL or treatment technique requirement; and

(c) Granting the exemption will not result in an unreasonable risk to health.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

Env-Dw 721.04 Exemption Request.

(a) The owner of a public water system who wishes to request an exemption for the system shall submit a request for exemption in writing to the department.

(b) Owners of water systems who seek similar exemptions under similar circumstances may submit a joint request for exemptions.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

Env-Dw 721.05 Content of Exemption Request. Any request for an exemption shall include the following information:

- (a) The name, location, and PWS identifier of the system for which the exemption is requested;
- (b) The nature and duration of exemption requested;
- (c) Relevant analytical results of water quality sampling of the system, including results of relevant tests conducted pursuant to the requirements of the drinking water rules;
- (d) An explanation of the basis for the request, as described in Env-Dw 721.03(a);
- (e) Any other information believed by the applicant to be pertinent to the application; and
- (f) A proposed compliance schedule that specifies the date when each step toward compliance will be achieved.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

Env-Dw 721.06 Consideration of an Exemption Request.

(a) The department shall act on any exemption request within 90 days of receipt of a complete request.

(b) In its consideration of whether the public water system meets the criteria specified in Env-Dw 721.03, the department shall consider such factors as the following:

- (1) The complexity and cost of construction, installation, or modification of the treatment equipment or systems;
- (2) The time needed to put a new treatment facility into operation or to replace an existing system which is not in compliance; and
- (3) The economic feasibility of compliance.

(c) The department shall not grant any exemption from the MCL for bacteria specified in Env-Dw 702.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

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Env-Dw 721.07 Disposition of an Exemption Request.

(a) The department shall notify the applicant in writing of its proposed decision on the application for an exemption.

(b) If the department determines that the exemption request does not demonstrate that the criteria for granting an exemption have been met, the notice sent pursuant to (a), above, shall:

- (1) State the reason(s) for the determination;
- (2) Offer the applicant an opportunity to present additional information or argument to the department within 30 days of receipt of the notice; and
- (3) Inform the applicant that if additional information or argument is not received, the application shall be deemed denied as of the day following the deadline for submitting the information.

(c) If the applicant submits additional information or argument, the department shall review the submittal and make a final determination on the request within 30 days after receiving the additional information or argument.

(d) If the department determines that the exemption request demonstrates that the criteria for granting an exemption have been met, the notice sent pursuant to (a), above, shall identify:

- (1) The name, location, and PWS identifier of the water system to which the exemption will apply;
- (2) The proposed exemption;
- (3) The termination date of the exemption; and
- (4) That the exemption shall be terminated:
  - a. When the system comes into compliance with the applicable rule; or
  - b. Upon a finding by the department, after notice and opportunity for a hearing, that the system has failed to comply with any requirements of a final schedule issued pursuant to Env-Dw 721.10, as applicable.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

Env-Dw 721.08 Proposed Schedules for Compliance and Control Measures.

(a) For an exemption requested under Env-Dw 721.02, the department shall propose a schedule for:

- (1) Compliance, including increments of progress, or measures to develop an alternative source of water, 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 department shall require for each contaminant covered by the exemption.

(b) The proposed schedule for compliance shall specify dates by which steps towards compliance are to be taken, including, at a minimum, the date by which final compliance shall be achieved.

(c) The final schedule shall be established by the department at the time the exemption is granted, subsequent to the opportunity for a hearing pursuant to Env-Dw 721.09.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

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Env-Dw 721.09 Public Hearings on Exemption Schedules.

(a) Prior to an exemption schedule proposed by the department pursuant to Env-Dw 721.07 and Env-Dw 721.08 taking effect, the department shall provide notice and opportunity for a public hearing on the exemption schedule.

(b) If the water system has requested more than one exemption, the notice given pursuant to this section shall include information on each of the exemptions requested.

(c) Public notice of the opportunity for a hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, including:

- (1) Posting a public notice in the principal post office of each municipality or area served by the public water system;
- (2) Publishing a notice in a newspaper of general circulation in the area served by the public water system; and
- (3) Delivering notices door-to-door or by first-class mail in the area served by the public water system.

(d) The public notice shall:

- (1) Include a summary of the proposed exemption schedule; and
- (2) Inform interested persons that they may request a public hearing on the proposed exemption schedule.

(e) Any interested person served by the system who wishes to request a public hearing shall submit the request to the department in writing within 30 days after the issuance of the public notices pursuant to (b), above.

(f) A request for public hearing shall include the following:

- (1) The name, physical address, and daytime telephone number of the individual, organization, or other entity requesting a hearing;
- (2) A brief statement of the interest the person making the request has in the proposed schedule; and
- (3) A brief summary of the information that the requesting person intends to submit at the hearing.

(g) The request shall be signed by the individual making the request, or, if the request is made on behalf of an organization or other entity, by a responsible official of the organization or other entity.

(h) The department shall:

- (1) Give notice in the manner set forth in (c), above, of any hearing to be held pursuant to a request submitted by an interested person or on the department's own motion; and
- (2) Send the notice of the hearing to the person requesting the hearing, if any.

(i) Notice of the hearing shall:

- (1) Include a statement of the purpose of the hearing;
- (2) Specify the time and location of the hearing;

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(3) Specify the address and telephone number of an office at which interested persons may obtain further information concerning the hearing; and

(4) Be given not less than 15 days prior to the date scheduled for the hearing.

(j) A hearing convened pursuant to this section shall be conducted in accordance with the provisions of Env-C 200 pertaining to non-adjudicative hearings.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

### Env-Dw 721.10 Action After Hearing; Final Schedule.

(a) Within 30 days after the conclusion of the public hearing or the publication of the notice, if no hearing is held, the department shall, after taking into consideration information obtained during the hearing:

- (1) Issue the exemption schedule as proposed;
- (2) Issue a revised exemption schedule for compliance, including interim measures; or
- (3) Deny the exemption request.

(b) The final schedule shall require compliance by the owner of the public water system with each contaminant level and treatment technique requirement prescribed as soon as practicable but not later than 36 months after the otherwise applicable compliance date established by the new rule.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

### Env-Dw 721.11 Extension of Date for Compliance.

(a) The final date for compliance provided in any schedule in the case of an exemption shall be extended by the department for a period not to exceed 3 years after the otherwise applicable compliance date established by the new rule if the owner of the public water system establishes that:

- (1) The system cannot meet the standard without capital improvements which cannot be completed within the period of the exemption;
- (2) In the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance but will not be able to complete the necessary improvements within the period of the exemption for reasons beyond the control of the water system; or
- (3) The system has entered into an enforceable agreement to become a part of a regional public water system and the system is taking all practicable steps to meet the standard.

(b) In the case of a system that does not serve a population of more than 3,300 persons and that needs financial assistance for the necessary improvements, an extension granted under (a)(1) or (2), above, shall be renewed for one or more additional 2-year periods, not to exceed a total of 6 additional years, if the owner of the system establishes that it is taking all practicable steps to come into compliance.

(c) If the department determines that a treatment method identified in Env-Dw 722 is technically feasible, the department shall require the owner of the system to install and use that treatment method in connection with a compliance schedule. The department's determination shall be based upon studies by the owner of the system and other relevant information.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

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Env-Dw 721.12 Bottled Water and Point-of-Use or Point-of Entry Devices.

(a) The department shall require a public water system to provide bottled water or point-of-use or point-of-entry devices or other means of response as a condition for granting an exemption from the requirements of Env-Dw 703 through Env-Dw 706.

(b) The owner of a public water system that uses bottled water as a condition of obtaining an exemption shall ensure the bottled water source meets the requirements specified in Env-Dw 303.

(c) The owner of a public water system that uses point-of-use or point-of-entry devices as a condition for receiving an exemption shall meet the requirements specified in Env-Dw 723.

Source. (See Revision Note #5 at chapter heading for Env-Dw 700) #10617, eff 6-1-14

**Appendix A: State Statutes/Federal Regulations Implemented**

| <b>Rule Section(s)</b> | <b>State Statute(s) Implemented</b> | <b>Federal Regulation(s) Implemented</b> |
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| Env-Dw 721             | RSA 485:3, I & III; RSA 485:42      | 40 CFR 142 Subparts C and F              |