CHAPTER 18
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

265—18.1(17A,16) Definitions. The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:zl

"Authority" means the Iowa finance authority whose powers are exercised by a board of nine members appointed by the governor pursuant to Iowa Code section 16.2.

"Executive director" means the executive director of the authority appointed by the governor pursuant to Iowa Code section 16.6, or the executive director's designee.

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, trust, partnership or association, or any legal entity.

"Waiver" or *"variance"* means an action by the authority which suspends in whole or in part the requirements or provisions of a rule as applied to a person on the basis of the particular circumstances of that person.

265—18.2(17A,16) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the authority in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

265—18.3(17A,16) Applicability of chapter. The authority may grant a waiver from a rule only if the authority has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The authority may not waive requirements created or duties imposed by statute.

265—18.4(17A,16) Criteria for waiver or variance. In response to a petition completed pursuant to rule 18.6(17A,16), the authority may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the authority finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

In determining whether a waiver or variance should be granted, the authority shall consider the public interest, policies and legislative intent of the statute on which the rule is based.

265—18.5(17A,16) Filing of petition. A petition for a waiver must be submitted in writing to the authority as follows:

18.5(1) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case. A copy of the request shall also be served on all parties to the contested case proceeding.

18.5(2) *Other.* If the petition does not relate to a pending contested case, the petition may be submitted to the attention of the executive director of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312.

265—18.6(17A,16) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

1. The name, address, and telephone number of the person for whom a waiver is being requested and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 18.4(17A,16). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the authority and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. Any information known to the requester regarding the authority's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any person who would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver.

265—18.7(17A,16) Additional information. Prior to issuing an order granting or denying a waiver, the executive director may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the executive director may schedule a telephonic or in-person meeting between the petitioner and the authority's executive director, or authority staff.

265—18.8(17A,16) Notice. The executive director shall acknowledge a petition upon receipt. The executive director shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the executive director may give notice to other persons. To accomplish this notice provision, the executive director may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the executive director attesting that notice has been provided.

265—18.9(17A,16) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case. These provisions shall otherwise apply to agency proceedings for a waiver only when the authority so provides by rule or order or is required to do so by statute.

265—18.10(17A,16) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains. The order shall include a statement of the relevant facts and reasons upon which the action is based and a description of the precise scope and duration of the waiver if one is issued.

18.10(1) *Executive director review.* The executive director may take up to 60 days to fully investigate and review the petition and, at the next board meeting thereafter, may present to the authority a suggested order based upon the executive director's investigation and review. The authority shall adopt, amend, or reject the suggested order. If the suggested order is rejected, the authority shall instruct the executive director to prepare an alternative order to be considered at a subsequent board meeting.

18.10(2) *Authority discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the authority upon consideration of all relevant factors.

The authority shall evaluate each petition for a waiver based on the unique, individual circumstances set out in the petition.

18.10(3) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the authority should exercise its discretion to grant a waiver from an authority rule.

18.10(4) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

18.10(5) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the authority shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

18.10(6) *Conditions.* The authority may place any condition on a waiver that the authority finds desirable to protect the public health, safety, and welfare.

18.10(7) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the authority, a waiver may be renewed if the authority finds that grounds for a waiver continue to exist.

18.10(8) *Time for ruling.* The authority shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the authority shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

18.10(9) *When deemed denied.* Failure of the authority to grant or deny a petition within the required time period shall be deemed a denial of that petition by the authority. However, the authority shall remain responsible for issuing an order denying a waiver.

18.10(10) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

265—18.11(17A,16) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the authority is authorized or required to keep confidential. The authority may accordingly redact confidential information from petitions or orders prior to public inspection.

265—18.12(17A,16) Summary reports. The authority shall semiannually prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the authority's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

265—18.13(17A,16) Voiding or cancellation. A waiver or variance is void if the material facts upon which the petition is based are not true or if material facts have been withheld. A waiver or variance issued by the authority pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the authority issues an order finding any of the following:

1. That the petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. That the alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. That the subject of the waiver order has failed to comply with all conditions contained in the order.

265—18.14(17A,16) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

265—18.15(17A,16) Defense. After the authority issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

265—18.16(17A,16) Judicial review. Granting or denying a waiver petition is final agency action under Iowa Code chapter 17A. Any petition for judicial review by the district court shall be filed within 30 days of the issuance of the order in response to the petition unless a different time is provided by rule or statute.

These rules are intended to implement Iowa Code section 17A.9A and chapter 16.

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Exhibit A

Sample Petition for Waiver/Variance

BEFORE THE IOWA FINANCE AUTHORITY

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER

A petition for waiver or variance from a rule adopted by the authority shall include the following information in the petition for waiver or variance where applicable and known:

a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.

b. Describe and cite the specific rule from which a waiver or variance is requested.

c. Describe the specific waiver or variance requested; include the exact scope and operative time period that the waiver or variance will extend.

d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver or variance will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

e. Provide a history of prior contacts between the authority and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.

f. Provide information known to the petitioner regarding the treatment by the authority of similar cases.

g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.

h. Provide the name, address, and telephone number of any person that would be adversely affected or disadvantaged by the granting of the waiver or variance.

i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

_____ _____

Petitioner's signature Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the authority, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The executive director may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the attention of the executive director of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.