

CHAPTER 16
WAIVERS AND VARIANCES

591—16.1(17A) Definition. The term “waiver” as used in this chapter means a described waiver or variance from a specific rule or set of rules of this board applicable only to an identified person on the basis of the particular circumstances of that person.

591—16.2(17A) Scope of chapter. This chapter creates standards and a process for granting individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this chapter with respect to any waiver from that rule.

591—16.3(17A) Applicability. This chapter applies only to waivers of those board rules that are within the exclusive rule-making authority of the board.

591—16.4(17A) Compliance with law. The board may not issue a waiver under this chapter unless the waiver is consistent with statute and other provisions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

591—16.5(17A) Criteria for a waiver. The board may issue an order, in response to a completed petition, or on its own motion, granting a waiver from a rule adopted by the board, in whole or in part, as applied to the circumstances of a specified person, if the board finds that the granting of such a waiver would not exceed the authority for granting waivers contained in Iowa Code section 17A.9A, that the waiver would not prejudice the substantial legal rights of any person, and either that:

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or
2. All of the following criteria have been met:
 - The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and
 - The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest; and
 - The waiver, if related to administrative deadlines, would not jeopardize the overall goals of the deadline as established.

In determining whether a waiver would be consistent with the public interest, the board shall consider whether, if a waiver is granted, the public health, safety, and welfare will be adequately protected by other means that will ensure a result that is substantially equivalent to full compliance with the rule.

591—16.6(17A) Board discretion. The final decision to grant or deny a waiver shall be vested in the board. This decision shall be made at the discretion of the board upon consideration of relevant facts.

591—16.7(17A) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant the petitioner a waiver based upon the criteria contained in this chapter.

591—16.8(17A) Contents of petition. A petition for a waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested. To the extent applicable, the petition should also include the site registration number(s) and LUST number(s) and the case number of any related contested case.
2. A description and citation of the specific rule or set of rules from which a waiver is being requested.

3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend.

4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented 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 petitioner and the board relating to the activity affected by the proposed waiver or variance, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years.

6. Any information known to the requester relating to the board'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 or variance.

8. The name, address, and telephone number of any entity or 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 of the waiver request to furnish the board with information relevant to the waiver.

11. If there is a contested case concerning the person, site or matter for which the petition for waiver is being made, such petition must include a signed statement consenting to ex parte communications between the board and its counsel concerning the facts and issues of the petition. If there is a contested case filed subsequent to this petition for waiver, such a statement must be provided at that time.

591—16.9(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board 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 board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative from the board to discuss the petition and surrounding circumstances.

591—16.10(17A) Notice. The board shall acknowledge the petition upon receipt. The petitioner shall ensure that 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, within 30 days of the receipt of the petition. The petitioner shall provide to the board a written statement attesting to the fact that proper notice has been provided and to whom that notice has been provided. In addition, the board may give notice to other persons.

591—16.11(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver of a rule or set of rules filed within a contested case, and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order, or is required to do so by statute or other binding law.

591—16.12(17A) 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, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative time period of a waiver if one is issued.

591—16.13(17A) Conditions. The board may condition the granting of the waiver on such conditions that the board deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

591—16.14(17A) Time for ruling. The board 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, then the board may grant or deny the petition at the time the final decision in that contested case is issued.

591—16.15(17A) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver as required by this rule.

591—16.16(17A) Service of orders. Within 30 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. The petitioner shall ensure that notice of the order and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the order. The petitioner shall provide a written statement attesting to the fact that proper notice has been provided and to whom that notice has been provided. In addition, the board may give notice to other persons.

591—16.17(17A) Record keeping. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the board shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and copies distributed to members of the administrative rules review committee upon request. All final rulings shall also be available for inspection by the public at the address identified in 591—1.4(455G) during regular business hours.

591—16.18(17A) Term and renewals of waivers. Waivers issued pursuant to this chapter will not be on a permanent basis, unless specified as permanent. If a waiver is issued without either a specified time frame or a statement clearly identifying the specified waiver as permanent, the waiver will be deemed to be for a duration of 120 days. A waiver will automatically expire if no action is taken by the board to renew the waiver. Any action to renew the waiver must be in writing and specify terms and conditions of the renewal.

591—16.19(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld from the board or knowingly misrepresented to the board material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient and no other means exists to protect the substantial legal rights of any person; or
3. The subject of the waiver order has failed to comply with all of the conditions contained in the order.

591—16.20(17A) Violations. A 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.

591—16.21(17A) Defense. After the board issues an order granting a waiver, the order shall constitute a defense, within the 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.

591—16.22(17A) Appeals. Appeals within the board from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and board rules. These appeals shall be taken within ten days of the issuance of the ruling granting or denying the waiver request unless a different time is provided by rule or statute.

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

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