

## **Instructions for Requesting a Variance or Waiver Using 120.542 Florida Statutes**

Petitions for variances or waivers should be printed or typed on one side of each page in number paragraphs. The format of the attached EXHIBIT may be used.

The body of the petition must contain the following information:

- 1 The name, address, email address, telephone number, and facsimile number of the petitioner;
- 2 The name, address, email address, telephone number, and facsimile number of the attorney or qualified representative (if any);
- 3 The rule cite from which variance or waiver is requested, including the text of the applicable portion of the rule;
- 4 The citation of the statute the rule is carrying out;
- 5 The type of action the petition is requesting from the agency (e.g. variance or waiver);
- 6 The facts that demonstrate a substantial hardship or violation of principles of fairness the would justify a variance or waiver;
- 7 The reason the variance or waiver serves the purpose of the underlying statute;
- 8 Whether the variance or waiver is permanent or temporary. If temporary, the petition should state the dates showing the length of time of the requested variance or waiver.

The agency shall provide notice to the Department of State within fifteen (15) days of receipt of the petition, which shall publish a notice in the Florida Administrative Review containing the name of the petitioner, the date the petition was filed, the rule from which relief is sought, and how a copy of the petition may be obtained.

If a situation requires immediate action, you may file a petition for an emergency variance or waiver. In addition to the items listed above, a petition for emergency variance or waiver must be identified as an emergency petition in the heading. It must specify what facts make the situation an emergency and what harm will occur if the variance or waiver is not issued sooner than the time frames normally provided. Emergency petitions must be granted or denied within thirty (30) days of receipt. When a situation requires an answer in less than thirty (30) days, your petition should state how soon you need an answer and why. If it is determined that no emergency exists, your petition will be considered on a non-emergency basis, and the normal deadlines will apply.

Except for emergency requests, the Department may request additional information within thirty (30) days of receipt of the petition. Within thirty (30) days of receipt of the additional information, the agency shall review and request only information that is needed to clarify or answer additional questions raised by the additional information received. If the petitioner asserts in writing that the additional information is not authorized by law or rule, the agency shall proceed to process the petition.

The Department must answer petitions for variance or waiver within ninety (90) days of receipt. However, petitions can be withdrawn at any time by the applicant prior to final agency action. If a petition is denied, you may request a hearing pursuant to sections 120.569 and 120.57, Florida Statutes. The Department must also provide notice of the disposition of the petition to the Department of State for publishing in the Florida Administrative Review.

For more information regarding variances and waivers, please refer to the Administrative Procedures Act, Chapter 120, Florida Statutes, and the Uniform Rules of Procedure, Chapter 28-104, Florida Administrative Code. Pertinent portions of each are attached. Petitions for variance or waiver should be sent to:

Florida Department of Health  
Attn: Agency Clerk  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1703

**EXHIBIT**

EXAMPLE

*Petition Form for Variance or Waiver*

STATE OF FLORIDA DEPARTMENT OF HEALTH,  
BUREAU OF ENVIRONMENTAL HEALTH

Date: \_\_\_\_\_

In re: \_\_\_\_\_ Petition for Variance (or Waiver) RE: (rule citation, please include text of rule)

Name of Petitioner \_\_\_\_\_

PETITION FOR [VARIANCE FROM] OR [WAIVER OF] RULE (INCLUDE CITE)

(Substance of Petition)

EXAMPLE

Signature of Petitioner Name, Address, Email Address, Telephone and Fax Numbers of Petitioner

Signature of Attorney or Qualified Representative (If Any) Name, Address, Email Address, Telephone and Fax Numbers of Representative