

**Washington State Board of Health  
Policy & Procedure**

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<b>Policy Number:</b>	<b>2018-001</b>
<b>Subject:</b>	<b>Handling Variances, Exemptions, and Waivers in State Board of Health Rules</b>
<b>Approved Date:</b>	<b>August 8, 2018</b>

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**Background**

The State Board of Health (Board) has broad authority to adopt rules on a number of public health and safety topics. These rules may include provisions regarding variances, exemptions, or waivers allowed under the rules, which may be granted by the Washington Department of Health (Department), local health jurisdictions, or the Board.

Variances, exemptions, and waivers are different types of exceptions that support flexible and reasonable application of Board rules depending on the particular situation. The terms are not defined in the regulations referenced below, but the general dictionary definitions of these words can be used to understand the distinctions between them:

- **Variance** means a modified means of meeting a rule requirement.
- **Exemption** means relief from a rule requirement.
- **Waiver** means the setting aside of a rule requirement.

As outlined in Table 1 of this policy, one or more of these exception provisions are used in twelve Board rules. In addition, state rules on reclaimed water administered by the Washington Department of Ecology reference Board waiver authority in chapter 246-290 WAC, *Group A Public Water Supplies*, for approval of direct potable reuse of reclaimed water.

In most cases, authority to grant exceptions is assigned to the Department, local board of health, or local health officer. Only three rules directly involve the Board. Two rules assign decision-making authority to the Board and a third provides the Board with optional approval authority:

- 1) WAC 246-262-160: Authorizes the Board to act on variance requests to requirements of chapter 246-262 WAC, *Recreational Water Contact Facilities*.
- 2) WAC 246-290-060: Authorizes the Board to act on requests for variances, exemptions, or waivers to requirements of chapter 246-290 WAC, *Group A Public Water Supplies*.
- 3) WAC 246-260-201: Authorizes the Department or local health officer to act on variance requests to requirements of chapter 246-260 WAC, *Water Recreation Facilities*. However, the Board may require that variance requests be submitted for Board review and approval.

### **Policy Statement**

Variances, exemptions, and waivers are valuable tools in Board rules. The Board plays a limited role directly granting such exceptions in implementing the rules. Where required in rules, the Board will consider requests for variances, exemptions, and waivers under the procedure outlined below.

New or revised Board rules can help refine the Board's limited role granting these exceptions and help align provisions for variances, exemptions, and waivers across Board rules. The following should be taken into consideration as Board rules containing these provisions are next updated:

- Variances, exemptions, and waivers should be clearly defined and correctly applied in all Board rules.
- Approval authority for variances, exemptions, and waivers should rest with the health agency where it best protects public health and safety, ensures accountability, and is most easily administered.
- Unless it provides needed flexibility, rules granting variances, exemptions, or waivers should avoid listing multiple or optional approval authorities and should instead authorize one agency.
- For ease of administration, rules authorizing local health jurisdictions to approve variances, exemptions, or waivers should identify local health officers rather than local boards of health as the approval authority.
- Provisions in chapter 246-260 WAC and chapter 246-262 WAC should be aligned—or combined if the rules are consolidated—and should assign approval authority to either the Department or local health officer.
- Where meaningful, annual reporting to the Board on activity related to variances, exemptions, and waivers can be required. If required, such reporting should occur consistently.

## **Board Procedure**

Where required in rule, the Board will consider requests for variances, exemptions, and waivers. As noted previously, two rules require Board action: chapter 246-262 WAC, *Recreational Water Contact Facilities*, and chapter 246-290 WAC, *Group A Public Water Supplies*. Chapter 246-262 WAC lacks any process requirements, so the following procedures apply in full. In contrast, WAC 246-290-060 and Policy J.28 of the Department's Office of Drinking Water outline a few process requirements that should be applied to dovetail with Board process requirements starting at the point of application to the Department. Variance and exemption requests under WAC 246-290-060 must be considered in accordance with 40 CFR s. 141.4 (variances and exemptions to National Primary Drinking Water Regulations).

## **Submittal of Requests**

Requests should be addressed to the Board Chair and signed by an authorized agent of the owner/operator of the facility or utility (not a third-party agent). With applications to the Department of Health under WAC 246-290-060, the Board Chair should be copied. The request should include and describe the following:

- name and address of the facility or utility, name of the owner/operator, and name and information for the lead contact;
- rule citation authorizing Board action;
- the specific rule or rules for which a variance, exemption, or waiver is sought;
- the situation, need, and justification for the request;
- supporting documentation and technical analysis developed or used to assess the request and meet the intent of the regulation to ensure health and safety;
- steps taken to mitigate concerns or risks; and
- commitment to carry out conditions or follow-up actions that may be applied to the request.

## **Receipt and Notification**

Upon receipt of a request, Board staff, in consultation with the Executive Director, will respond to the requester within five business days acknowledging receipt of the request. The Executive Director or staff will notify Board members that a request has been received and will be brought to the Board for consideration at the next regularly scheduled Board meeting. The Board will strive to complete its

work and respond to a request within 60 days. If no regular meeting is scheduled within 60 days of receipt, or if the agenda for the regular meeting cannot accommodate review of the request, or if staff need more time to complete its review, the request may be addressed at the following Board meeting. The Executive Director or staff will notify the requester of dates and times that the Board is scheduled to meet and consider the request. As part of its initial review, the Board will determine whether a request falls within its authority to review. If the Board determines that a request falls outside the scope of its authority, staff will notify the requester of this and close the request.

### **Review and Board Action**

The Board may identify a sponsoring Board member and will direct staff to review the request on the basis of relevant laws, industry standards, health and safety guidelines, and other relevant material. Board staff will coordinate and consult with the Department and other subject matter experts as appropriate in reviewing the request.

The sponsor and Board staff assigned to review the request will present their findings and recommendation to the Board. The Board may ask a Department representative to provide a recommendation or technical analysis to help inform Board discussions. The Board may invite the requester to present the request and respond to questions from the Board at its meeting.

Following review, the Board may grant the request, grant the request with conditions, deny the request, or ask for additional information before acting on the request. The Board may grant a variance, exemption, or waiver from rule requirements if it meets the substantive requirements of the rule allowing a variance, exemption, or waiver. Variances and exemptions granted to public water systems must be conditioned on a compliance schedule in accordance with WAC 246-290-060(6). The decision will be made by the Board in public meeting. Once the Board has made its decision, Board staff will follow up with a written notice to the requester. If the Board denies a request, the notice will contain information about how the requester may appeal the decision.