

Section 16.1 Policy

The Department may apply for a variance from a specific Section or Part of these minimum standards when compliance cannot be achieved or continued. A "variance" is an exemption granted by the Board from full compliance with a particular Section or Part for a specified period of time.

Section 16.2 Variance Prior to Effective Date

(a) The Department may apply to the Board for a variance prior to the effective date of a particular Section or Part when:

- (i) despite its best efforts and the best efforts of other New York City officials and agencies, full compliance with the Section or Part cannot be achieved by the effective date, or
- (ii) compliance is to be achieved in a manner other than specified in the Section or Part.

Section 16.3 Variance Application

(a) An application for a variance must be made in writing to the Board by the Commissioner of the Department at least 45 days prior to the effective date and shall state:

- (i) the particular Section or Part at issue;
- (ii) the efforts undertaken by the Department to achieve compliance by the effective date;
- (iii) the specific facts or reasons making full compliance by the effective date impossible;
- (iv) the specific plans, projections and timetables for achieving full compliance;
- (v) the specific plans for serving the purpose of the Section or Part for the period that strict compliance is not possible; and
- (vi) the time period for which the variance is requested, provided that this shall be no more than six months.

Section 16.4 Variance Procedure

(a) Prior to a decision on a variance application, the Board shall consider the positions of all interested parties, including correctional employees, prisoners and their representatives, public officials and legal, religious and community organizations.

(b) In order to receive this input the Board shall publicize the variance application in its entirety in a manner reasonably calculated to reach all interested parties, including direct mail. This shall occur at least 30 days prior to the effective date of the Section or Part.

(c) The Board shall hold a public meeting or hearing on the variance application and hear testimony from all interested parties at least 21 days prior to the effective date.

(d) The Board's decision on a variance application shall be in writing and shall include the specific facts and reasons underlying the decision.

(e) The Board's decision shall be publicized in the manner provided by Section 16.4(b) at least 10 days prior to the effective date.

Section 16.5 Granting of Variance

(a) The Board shall grant a variance only if it is convinced that the variance is necessary and justified.

(b) Upon granting a variance, the Board shall state:

- (i) the time period of the variance and
- (ii) any requirements imposed as conditions on the variance.

Section 16.6 Renewal of Variance

An application for a renewal of a variance shall be treated in the same manner as an original application as provided in Sections 16.2, 16.3, 16.4 and 16.5. The Board shall not grant renewal of a variance unless it finds that, in addition to the requirements for approving an original application, a good faith effort has been made to comply with the Section or Part within the previously prescribed time limitation.

Section 16.7 Emergency Variance After Effective Date

The Department may apply to the Board for a variance after the effective date of a particular Section or Part when an emergency situation prevents continued compliance with the Section or Part.

Section 16.8 Emergency Variance Application

(a) A variance for a period of less than 24 hours may be declared by the Department or a designate when an emergency situation prevents continued compliance with a particular Section or Part. The Board or a designate shall be immediately notified of the emergency situation and the variance.

(b) An application for an emergency variance for a period of 24 hours or more, or for a renewal of an emergency variance, must be made by the Commissioner of the Department or a designate to the Board and shall state:

- (i) the particular Section or Part at issue;
- (ii) the specific facts or reasons making continued compliance impossible;
- (iii) the specific plans, projections and timetables for achieving full compliance; and
- (iv) the time period for which the variance is requested, provided that this shall be no more than five days.

Section 16.9 Granting of Emergency Variance

(a) The Board shall grant an emergency variance only if it is convinced that the variance is necessary and justified.