

17A.9A Waivers and variances.

1. Any person may petition an agency for a waiver or variance from the requirements of a rule, pursuant to the requirements of this section, if the agency has established by rule an application, evaluation, and issuance procedure permitting waivers and variances. An agency shall not grant a petition for waiver or a variance of a rule unless the agency has jurisdiction over the rule and the waiver or variance is consistent with any applicable statute, constitutional provision, or other provision of law. In addition, this section does not authorize an agency to waive or vary any requirement created or duty imposed by statute.

2. Upon petition of a person, an agency may in its sole discretion issue a waiver or variance from the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would pose an undue hardship on the person for whom the waiver or variance is requested.

b. The waiver or variance from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person.

c. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law.

d. 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.

3. The burden of persuasion rests with the person who petitions an agency for the waiver or variance of a rule. Each petition for a waiver or variance shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. A waiver or variance, if granted, shall be drafted by the agency so as to provide the narrowest exception possible to the provisions of the rule. The agency may place any condition on a waiver or a variance that the agency finds desirable to protect the public health, safety, and welfare. A waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the agency, a waiver or variance may be renewed if the agency finds all of the factors set out in subsection 2 remain valid.

4. A grant or denial of a waiver or variance petition shall be indexed, filed, and available for public inspection as provided in section 17A.3. The administrative code editor and the administrative rules coordinator shall devise a mechanism to identify rules for which a petition for a waiver or variance has been granted or denied and make this information available to the public.

5. Semiannually, each agency which permits the granting of petitions for waivers or variances shall prepare a report of these actions identifying the rules for which a waiver or variance has been granted or denied, the number of times a waiver or variance 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 agencies' actions on the waiver or variance request. To the extent practicable, this report shall detail the extent to which the granting of a waiver or variance has established a precedent for additional waivers or variances and the extent to which the granting of a waiver or variance has affected the general applicability of the rule itself. Copies of this report shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

6. For purposes of this section, "*a waiver or variance*" means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

2000 Acts, ch 1176, §1

Referred to in §105.18, 153.39, 261.5