

CHAPTER 10
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

286—10.1(17A) Scope of chapter. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the commission in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

[ARC 7596B, IAB 2/25/09, effective 4/1/09]

286—10.2(17A) Definitions.

“*Commission*” means the commission of libraries established by Iowa Code section 256.52.

“*Division*” means the division of libraries and information services of the department of education.

“*Person*” means an individual, library, government or governmental subdivision or agency, partnership or association, or any legal entity.

“*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.

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286—10.3(17A) Applicability.

10.3(1) The commission may grant a waiver or variance from a rule adopted by the commission only if (1) the commission has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested; and (3) the requested waiver or variance is consistent with applicable statutes, constitutional provisions, or other provisions of law.

10.3(2) No waiver or variance may be granted from a requirement which is imposed by statute.

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286—10.4(17A) Commission discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the commission upon consideration of all relevant factors. Each petition for a waiver or variance shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

10.4(1) Criteria for waiver or variance. In determining whether a waiver or variance should be granted, the commission shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver or variance is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons. The commission may, in response to a completed petition, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the commission finds all of the following:

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

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

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

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.

10.4(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the commission from granting waivers or variances in other contexts if a statute or other rule authorizes the commission to do so and the commission deems it appropriate to do so.

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286—10.5(17A) Requester's responsibilities in filing a petition for waiver or variance.

10.5(1) Application. All petitions for waiver or variance must be submitted in writing to the State Library, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

10.5(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester:

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance under each of the four criteria specified in paragraphs "a" through "d" of subrule 10.4(1).
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the commission and the petitioner or between the division and the petitioner within the past five years.
- f. Any information known to the requester regarding the treatment of similar cases by the commission.
- g. The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of a waiver or variance.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver or variance.

10.5(3) Burden of persuasion. When a petition is filed for a waiver or variance from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the commission should exercise the commission's discretion to grant the petitioner a waiver or variance.

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286—10.6(17A) Notice. The commission shall acknowledge a petition upon receipt. The commission shall ensure that, within 30 days of the receipt of the petition, 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. In addition, the commission may give notice to other persons. To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the commission attesting that notice has been provided.

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286—10.7(17A) Commission's responsibilities regarding petition for waiver or variance.

10.7(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the commission 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 commission may, on the commission's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the commission.

10.7(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver or variance of a rule filed within a contested case; (2) when the commission so provides by rule or order; or (3) when a statute so requires.

10.7(3) Ruling. An order granting or denying a waiver or variance 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 period of the waiver if one is issued.

10.7(4) Conditions. The commission may place any condition on a waiver or variance that the commission finds desirable to protect the public health, safety, and welfare.

10.7(5) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

10.7(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for a waiver continue to exist.

10.7(7) Time for ruling. The commission shall grant or deny a petition for a waiver or variance 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, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

10.7(8) When deemed denied. Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission.

10.7(9) Service of order. Within seven 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.

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286—10.8(17A) Public availability. All orders granting or denying waivers and variances under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver or variance and orders granting or denying a waiver or variance petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information that the commission is authorized or required to keep confidential. The commission may accordingly redact confidential information from petitions or orders prior to public inspection.

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286—10.9(17A) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver or variance issued by the commission pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the commission issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented 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 have been demonstrated to be insufficient; or

3. The subject of the waiver order has failed to comply with any conditions contained in the order.

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286—10.10(17A) Violations. Violation of conditions in the waiver or variance order is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

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286—10.11(17A) Defense. After the commission issues an order granting a waiver or variance, the order is a defense within its 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.

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286—10.12(17A) Judicial review. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. Judicial review of the decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

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286—10.13(17A) Summary reports. Semiannually, the division shall prepare a summary report identifying the rules for which a waiver has been granted or denied by the commission, the number of times a waiver 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 commission's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

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

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