

801—4.15(17A,35D) Procedures for granting waivers.

4.15(1) Any person may file a petition with the commission of veterans affairs requesting a waiver or variance, in whole or in part, of a commission rule on the grounds that the application of the rule to the particular circumstances of that person justifies a waiver under this uniform waiver rule. The commission chairperson shall receive written petitions.

4.15(2) A petition for a waiver or variance shall include the following information where applicable and known to the person requesting the waiver or variance:

a. The name, address, and case number or state identification number of the entity or person for whom a waiver or variance is requested.

b. A description and citation of the specific rule from which a waiver or variance is requested.

c. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

d. The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include 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 the commission's action relative to the petitioner.

f. Any information regarding the commission's treatment of similar cases, if known.

g. The name, address, and telephone number of any person inside or outside state government who would be adversely affected by the granting of the petition or who otherwise possesses knowledge of the matter with respect to the waiver or variance request.

h. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information pertaining to the waiver or variance.

4.15(3) The procedural guidelines stated under the Iowa Administrative Procedure Act, Iowa Code chapter 17A, shall govern the form, filing, timing and contents of petitions for the waivers of rules and the procedural rights of persons in relation to such petitions.

4.15(4) The commission shall acknowledge a petition upon receipt. The petitioner shall serve 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 served.

4.15(5) Prior to issuing an order granting or denying a waiver or variance request, the commission may request additional information from the petitioner relative to the application and surrounding circumstances.

4.15(6) An order granting or denying a request for waiver or variance shall be in writing and 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 that action is based, and a description of the precise scope and operative period of the waiver or variance if one is issued. The commission shall grant or deny a petition for the waiver or variance of all or a portion of a rule 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 waiver petition has been filed in a contested case proceeding, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the commission to grant or deny such a petition within the required time period shall be deemed a denial of that petition by the commission.

4.15(7) Within seven days of its issuance, any order issued under the uniform waiver rule 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.

4.15(8) Subject to the provisions of Iowa Code section 17A.3(1) "e," the commission shall maintain a record of all orders granting and denying requests for waivers or variances under this uniform waiver rule. The records shall be indexed by rule and available for public inspection.

4.15(9) Semiannually, the commission shall prepare a report 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, a general summary of the reasons justifying the commission's actions on the waiver or variance requests and, to the extent practicable, detailing the extent to which the granting of a waiver or variance has affected the general

applicability of the rule itself and established a precedent for additional waivers or variances. Copies of this report shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

4.15(10) The provisions of rules 4.14(35D) and 4.15(35D) shall not apply to rules that define the meaning of a statute or other provisions of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition and do not authorize the commission to waive any requirement created or duty imposed by statute.

4.15(11) After the commission issues an order granting a waiver, 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 invoked.