

801—4.14(17A,35D) Uniform waiver rule.

4.14(1) To the extent a waiver or variance is consistent with applicable statute, constitutional provision, or other provision of law, the commission of veterans affairs may issue an order, in response to the timely filing of a completed petition or on its own motion, granting a waiver or variance, in whole or in part, from the requirements of a rule under the jurisdiction of said commission, as applied to the circumstances of a specified person, if the commission finds clear and convincing evidence of all of the following:

- a.* The application of the rule to the person at issue would result in undue hardship to that person; and
- b.* 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; and
- c.* The waiver of the rule in the specific case would not prejudice the substantial legal rights of any person; and
- d.* Substantially equal protection of public health, safety and welfare will be afforded by a means other than that prescribed in the rule for which the waiver or variance is requested.

The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the chairperson of the commission of veterans affairs based on the unique, individual circumstances set out in the petition and upon consideration of all relevant factors.

4.14(2) A waiver or variance, if granted, shall be drafted by the commission so as to provide the narrowest exception possible to the provisions of the rule. The commission may place any condition on a waiver or variance that the commission 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 that all of the factors set out in subrule 4.14(1) remain valid.

4.14(3) The burden of persuasion rests with the person who petitions the commission for the waiver or variance of a rule.

4.14(4) This uniform waiver rule shall not preclude the commission from granting waivers or variances in other contexts or on the basis of other standards if the statute or other rules authorize it to do so and the commission deems it appropriate to do so.