

17A.9A Waivers.

1. Any person may petition an agency for a waiver 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. An agency shall not grant a petition for waiver of a rule unless the agency has jurisdiction over the rule and the waiver is consistent with any applicable statute, constitutional provision, or other provision of law. In addition, [this section](#) does not authorize an agency to waive any requirement created or duty imposed by statute.

2. Upon petition of a person, an agency may in its sole discretion issue a waiver 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 is requested.

b. The waiver 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 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 is requested.

3. The burden of persuasion rests with the person who petitions an agency for the waiver of a rule. Each petition for a waiver shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. A waiver, 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 that the agency finds desirable to protect the public health, safety, and welfare. 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 agency, a waiver 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 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 an internet site to identify rules for which a petition for a waiver has been granted or denied and make this information available to the public. When an agency grants a waiver, the agency shall submit the information required by [this subsection](#) on the internet site within sixty days. The internet site shall identify the rules for which a waiver has been granted or denied, 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 agencies' actions on the waiver request. To the extent practicable, the agency shall include information detailing the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

5. For purposes of [this section](#), "a waiver" 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](#); [2020 Acts, ch 1090, §10](#)

Referred to in [§17A.6A, 105.18, 153.39, 261.5](#)

Section amended