

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.