

CHAPTER 33
UNIFORM RULES FOR WAIVERS

495—33.1(17A,97B,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers from rules adopted by the agency.

33.1(1) Agency authority. A waiver from rules adopted by the agency may be granted in accordance with this rule if:

a. The agency has exclusive rule-making authority to promulgate the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and

b. No statute or rule otherwise controls the grant of a waiver from the rule for which a waiver is requested.

33.1(2) Interpretive rules. This chapter shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the agency does not possess delegated authority to bind the courts to any extent with its definition.

33.1(3) Compliance with statute. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

495—33.2(17A,97B,ExecOrd11) Criteria for waiver. The agency may issue an order granting a waiver, as applied to the circumstances of a specified person, if the petitioner establishes by clear and convincing evidence that:

1. Application of the rule to that person would result in hardship or injustice; and
2. Granting the waiver on the basis of the particular circumstances of that specified person would be consistent with the public interest; and
3. Granting the waiver in that case would not prejudice the substantial legal rights of any other person.

In determining whether a waiver would be consistent with the public interest under paragraph “2,” the agency shall consider whether, if the waiver is granted, the public interest will be protected by other means that are substantially equivalent to full compliance with the rule.

33.2(1) The agency may condition the grant of a proposed waiver on such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

33.2(2) This rule shall not preclude the agency from granting waivers in other contexts or on the basis of other standards if the agency deems it appropriate to do so and is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

33.2(3) The inadvertent granting of a waiver by the agency shall not be deemed to be a waiver to which the provisions of this rule apply but, depending on the facts and circumstances, the agency may limit enforcement of the affected rule(s) on a prospective basis.

33.2(4) The petitioner shall bear the burden of persuasion when a petition for waiver from an agency rule is filed.

33.2(5) When the rule from which a waiver is sought establishes administrative deadlines, the agency shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

495—33.3(17A,97B,ExecOrd11) Process for filing a petition. Any person may file with the agency a petition requesting a waiver, in whole or in part, of a rule of the agency on the ground that the application of the rule to the particular circumstances of that person would qualify for a waiver.

A petition for a waiver must be submitted in writing to the Administrative Rules Coordinator, Iowa Public Employees’ Retirement System (IPERS), 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. If the request relates to a pending contested case, the request shall also be filed in the contested case proceedings. Waiver rulings shall be made by agency staff having jurisdiction over the

particular issue and having the authority to issue final rulings on appeals regarding such issues, provided that the CEO shall have final authority with respect to all waiver rulings.

33.3(1) Contents of petition. A petition for waiver does not need to follow a particular format, but must contain the following elements.

- a. The name, address, social security number, and telephone number of the petitioner and the name, address, and telephone number of the petitioner's representative, if any.
- b. The specific rule or rules for which a waiver is requested.
- c. The precise scope and operative period of the waiver requested, including any alternative means or other condition or modification proposed to achieve the purposes of the rule.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition.
- e. An explanation of the reasons for the waiver, including all material facts relevant to the waiver in question.
- f. A description of any prior contacts between the agency and the petitioner relating to the proposed waiver including, but not limited to, a list or description of prior notices, investigative reports, advice, negotiations, consultations or conferences, contested case rulings, and penalties relating to the proposed waiver.
- g. The name, address, and telephone number of any person or entity that would be adversely affected by the waiver in question.
- h. Any information known to the petitioner regarding the agency's treatment of similar cases.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
- j. Any signed releases required to obtain relevant information from persons with knowledge of such information.

33.3(2) Burden of proof. When a petition is filed for a waiver, the burden of proof shall be on the petitioner to demonstrate by clear and convincing evidence that the agency should grant the waiver.

495—33.4(17A,97B,ExecOrd11) Additional information. Prior to issuing an order granting or denying a petition for waiver, the agency may request additional information from the petitioner relating to the petition and surrounding circumstances. If the petition was not filed in a contested case, the agency may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and agency representatives.

495—33.5(17A,97B,ExecOrd11) Notices. Within 30 business days after receipt of a petition for waiver of a rule, the agency shall give notice of the pendency of the petition and a concise summary of its contents to all persons to whom notice is required by any provision of law. In addition, the agency may give notice to other persons.

If notice is required to be served, the agency 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 agency attesting that notice has been provided.

495—33.6(17A,97B,ExecOrd11) Intervenors. Persons who qualify as intervenors under any provision of law may intervene in proceedings for waiver of a rule if they file timely petitions for intervention according to agency rules governing such intervention.

495—33.7(17A,97B,ExecOrd11) Hearing, ruling and timing. The provisions of 495—Chapter 26 shall apply to proceedings under this chapter if the petition for waiver is filed in a contested case proceeding. Prior to issuing an order granting or denying a proposed waiver, the agency shall determine whether or not the facts alleged in the proposed waiver are accurate and complete.

33.7(1) Ruling. An order granting or denying a proposed waiver 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 on which that action is based, and a description of the precise scope (including any conditions) and operative period of the waiver, if one is granted.

33.7(2) *Timing of ruling.* The agency shall grant or deny a petition for waiver 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 or the agency, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition for waiver 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.

33.7(3) *When deemed denied.* Failure of the agency to grant or deny a petition for waiver within the required time period shall be deemed a denial of that petition by the agency.

33.7(4) *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.

495—33.8(17A,97B,ExecOrd11) Defense. After an order granting a waiver is issued, 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.

495—33.9(17A,97B,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the agency shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the headquarters of the agency.

495—33.10(17A,97B,ExecOrd11) Rules from which the agency shall not grant waivers. The agency shall not grant waivers from the following rules, except as otherwise indicated in the following list.

1. Rules which implement state or federal law, if the waiver could affect the taxability of pension benefits under the Internal Revenue Code and regulations thereunder or the Iowa Code and rules adopted thereunder;

2. Rules which set forth the formulas used to calculate IPERS’ monthly retirement benefits, actuarial equivalents, dividends, amounts to be credited to supplemental accounts of active members, refunds, death benefits, and service purchase costs;

3. Rules which implement contribution rates and actuarial assumptions set by IPERS;

4. Rules which limit the release of confidential information;

5. Rules which implement contracts between the agency and its vendors (except as permitted in such contracts);

6. Rules governing separations, disciplinary actions, reductions in force, and grievances and appeals as permitted by statute and applicable agency rules.

7. Rules governing the number of voting members of the IPERS’ investment board necessary to constitute a quorum and the number of votes necessary to constitute a vote of that board.

495—33.11(17A,97B,ExecOrd11) Voiding or cancellation. A waiver is void if the material facts upon which the petition is based are not true or if material facts have been withheld or omitted. The agency may at any time cancel a waiver upon appropriate notice and hearing if the agency finds that the facts as stated in the request are not true, material facts have been withheld or omitted, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the petitioner has failed to comply with conditions set forth in the order.

495—33.12(17A,97B,ExecOrd11) Violations of conditions. Violations of the conditions precedent to a waiver’s approval shall be deemed to be violations of the particular rule for which the waiver was granted and will be subject to the same remedies or penalties.

495—33.13(17A,97B,ExecOrd11) Appeals. Appeals of the agency's decisions regarding proposed waivers shall be filed in writing within 30 days after notice of the decision is mailed to the petitioner.

These rules are intended to implement Executive Order Number 11 and Iowa Code chapters 17A and 97B.

[Filed 12/17/03, Notice 11/12/03—published 1/7/04, effective 2/11/04]