

CHAPTER 19
WAIVERS FROM RULES

185—19.1(17A) Scope. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the division. The intent of this chapter is to allow persons to seek exception to the application of rules adopted by the division.

19.1(1) Definition. For purposes of this chapter, a “waiver or variance” means an action by the division that 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. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

19.1(2) Authority.

- a.* A waiver from rules adopted by the division may be granted in accordance with this chapter if:
- (1) The division has the authority to promulgate the rule from which the waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and
 - (2) No statute or rule otherwise controls the granting of a waiver from the rule from which the waiver is requested.
- b.* No waiver may be granted from a requirement that is imposed by statute. All waivers must be consistent with statute.

185—19.2(17A) Division discretion. The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the division upon consideration of all relevant factors. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

19.2(1) Criteria. The division may, in response to a completed petition, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specific situation if the division finds each of the following:

- a.* Application of the rule would result in hardship or injustice to the person for whom the waiver is requested;
- b.* Waiver from the rule on the basis of the particular circumstances would not prejudice the substantial legal rights of any person;
- c.* Provisions of the rule subject to the request for a waiver are not specifically mandated by statute or another provision of law; and
- d.* Where applicable, 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.

19.2(2) Determination. In determining whether a waiver should be granted, the division shall consider whether the underlying intent of the rule is substantially equivalent to full compliance with the rule. When the rule from which a waiver is sought establishes administrative deadlines, the division shall balance the special individual circumstances of the requester with the overall goal of uniform treatment of all licensees and other petitioners.

185—19.3(17A) Requester’s responsibilities.

19.3(1) Application. All petitions for a waiver must be submitted in writing to the Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021. If the petition relates to a pending case, a copy of the petition shall also be filed in the contested case proceeding.

19.3(2) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

- a.* Name, address, and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.
- b.* Description and citation of the specific rule from which a waiver is requested.
- c.* Specific waiver requested, including the precise scope and duration.
- d.* Relevant facts that the petitioner believes would justify a waiver. 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.

e. History of any prior contacts between the division and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

f. Information known to the requester regarding the division's treatment of similar cases.

g. Name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.

h. Name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

i. Name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the division with information relevant to the waiver.

19.3(3) *Burden of persuasion.* When a petition is filed for a waiver from a division rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion in the granting of the waiver.

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185—19.4(17A) Notice. The division shall acknowledge a petition upon receipt. The division shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division 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 division attesting that notice has been provided.

185—19.5(17A) Division's responsibilities.

19.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

19.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in the following situations:

- a.* To any petition for a waiver filed within a contested case;
- b.* When the division so provides by rule or order; or
- c.* When a statute so requires.

19.5(3) *Ruling.* An order granting or denying a 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 upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

19.5(4) *Conditions.* The division shall condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

19.5(5) *Duration of waiver.* 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 division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

19.5(6) *Time for ruling.* The division shall grant or deny a petition for a 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. However, if a petition is filed in a contested case, the division shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

19.5(7) *When deemed denied.* Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division.

19.5(8) *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.

185—19.6(17A) Public availability. Subject to the provisions of Iowa Code section 17A.3, the division shall maintain a record of all orders granting or 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 Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Orders containing information that the division is authorized or required to keep confidential shall be edited prior to public inspection.

185—19.7(17A) Cancellation. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver request withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

185—19.8(17A) Violations. Violation of a condition in a waiver order is equivalent to a violation of the rule for which the waiver is granted. The recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

185—19.9(17A) Defense. After the division 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 sought to be invoked.

185—19.10(17A) Appeals. Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A.

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These rules are intended to implement Iowa Code sections 17A.9A and 17A.10 and Executive Order Number 11.

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