11—9.4(17A,8A) **Granting a waiver.** In response to a petition completed pursuant to rule 11—9.6(17A,8A), the director may, in the director's sole discretion, issue an order waiving in whole or in part the requirements of a rule.

9.4(1) *Criteria for waiver.* A waiver may be granted if the director finds based on clear and convincing evidence each 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 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 a 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 is requested.

In determining whether a waiver should be granted, the director 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 is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

9.4(2) *Special waiver of rules not precluded.* These rules shall not preclude the director from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so; the director deems it appropriate to do so; and the director 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.

9.4(3) *Procurement-related waiver.* The director may waive a rule due to noncompliance with a stated requirement in a procurement, sale, or auction if the request meets all of the following criteria:

a. The request is made prior to the issuance of a notice of intent to award a contract or the finalization of a sale.

b. The waiver will tend to promote competition rather than inhibit or reduce competition.

c. The waiver will not materially alter the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.

d. The noncompliance with the stated requirement is correctable (if correction is necessary) without materially or substantially altering the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.

e. No other person who submits an offer, a response to an invitation to bid or a response to a request for proposals is materially or substantially harmed by the waiver. A person shall not be deemed to have been harmed if the waiver merely increases competition.

f. Fundamental notions of good faith and fair dealing favor the issuance of a waiver.

g. The waiver will not result in unreasonable delay in the procurement, sale or auction and will not interfere with certainty or finality in the procurement, sale or auction.

If the stated terms of the procurement, sale or auction permit or authorize waiver from the stated terms, the director may waive the stated terms without regard to subrule 9.4(1).

9.4(4) *Special waiver not permitted.* The compensation rates for publication in a newspaper for any notice, order or citation or other publication required or allowed by law as determined by the state printing administrator pursuant to Iowa Code section 618.11 shall not be waived. The procedure established in this chapter does not apply to waiver of contractual terms or conditions; contracts shall be waived only upon their own terms. These rules do not apply to the Terrace Hill commission established in Iowa Code section 8A.326 or rules adopted by the commission unless these rules are adopted by the Terrace Hill commission.

[**ARC 4053C**, IAB 10/10/18, effective 11/14/18; **ARC 5391C**, IAB 1/13/21, effective 2/17/21]