

129—7.9(8B,17A) 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, if a waiver is issued, a description of the precise scope of the waiver including its duration and any conditions associated therewith.

7.9(1) CIO discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the CIO, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the CIO based on the unique, individual circumstances set out in the petition.

7.9(2) Burden of proof and persuasion. The burden of proof and persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the CIO should exercise discretion to grant a waiver.

7.9(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

7.9(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the office shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

7.9(5) Conditions. The CIO may place any condition on a waiver that the CIO finds desirable to protect the public health, safety, and welfare and information security.

7.9(6) Time period 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 CIO, a waiver may be renewed if the CIO finds that grounds for a waiver continue to exist.

7.9(7) Time for ruling. The CIO 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 or the department, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition is filed in a contested case, the CIO shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

7.9(8) When deemed denied. Failure of the CIO to grant or deny a petition within the required time period shall be deemed a denial of that petition by the CIO. However, the CIO shall remain responsible for issuing an order denying a waiver.

7.9(9) 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. Such service may be effectuated by email or similar electronic means.

[ARC 4823C, IAB 12/18/19, effective 1/22/20]