

**191—4.5(17A) Waivers.**

**4.5(1) Scope.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. This chapter shall not preclude the division from granting waivers in other contexts or on the basis of other standards if a statute or agency rule authorizes the division to do so and the division deems it appropriate to do so.

**4.5(2) Authority to grant waivers.** The division may grant a waiver from a rule only if the division has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The division may not waive the following categories of rules:

- a.* Rules setting requirements that are created or duties that are imposed by statute.
- b.* Rules that provide definitions or interpretations, set fees, clarify enforcement authority, deal with fraud or are the subject of prosecutorial discretion.
- c.* Rules that merely define the meaning of a statute or other provision of law or precedent if the commissioner does not possess delegated authority to bind the courts to any extent with the commissioner's definition.

**4.5(3) Criteria for order for waiver.** The division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

- a.* Application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b.* Waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c.* 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.

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