

191—4.23(17A) Waiver hearing procedures and ruling.

4.23(1) Procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute.

4.23(2) 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.

4.23(3) Division discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division, upon consideration of all relevant factors. Each petition for a waiver must be evaluated by the division based on the unique, individual circumstances set out in the petition.

4.23(4) Ruling. An order granting or denying a waiver must be in writing and must 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.

4.23(5) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver from a division rule.

4.23(6) Narrowly tailored exception. A waiver, if granted, must provide the narrowest exception possible to the provisions of a rule.

4.23(7) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the division must balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

4.23(8) Conditions. The division may place any condition on a waiver that the division finds desirable to protect the public health, safety, and welfare.

4.23(9) Time period of waiver. A waiver must 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.

4.23(10) Time for ruling. The division must grant or deny a petition for a waiver as soon as practicable but, in any event, must 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 must grant or deny the petition no later than the time at which the final decision in that contested case is issued.

4.23(11) 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. However, the division shall remain responsible for issuing an order denying a waiver.

4.23(12) Service of order. Within seven days of its issuance, any order issued under this chapter must 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.

4.23(13) Cancellation of a waiver. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, modified or revoked if, after appropriate notice and hearing, the division issues an order finding any of the following:

- a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b. 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
- c. The subject of the waiver order has failed to comply with all conditions contained in the order;

or

d. The waiver is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

4.23(14) *Violations.* Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, 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.

[ARC 4780C, IAB 11/20/19, effective 12/25/19]