

781—19.10(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 a description of the precise scope and duration of the waiver if one is issued.

19.10(1) Agency discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the agency, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the agency based on the unique, individual circumstances set out in the petition.

19.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the agency should exercise its discretion to grant a waiver from an agency rule.

19.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

19.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the agency shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

19.10(5) Conditions. The agency may place any condition on a waiver that the agency finds desirable to protect the public health, safety, and welfare.

19.10(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 agency, a waiver may be renewed if the agency finds that grounds for a waiver continue to exist.

19.10(7) Time for ruling. The agency 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 agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

19.10(8) When deemed denied. Failure of the agency to grant or deny a petition within the required time period shall be deemed a denial of that petition by the agency. However, the agency shall remain responsible for issuing an order denying a waiver.

19.10(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.