

265—18.10(17A,16) 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. The order shall include 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.

18.10(1) Executive director review. The executive director may take up to 60 days to fully investigate and review the petition and, at the next board meeting thereafter, may present to the authority a suggested order based upon the executive director's investigation and review. The authority shall adopt, amend, or reject the suggested order. If the suggested order is rejected, the authority shall instruct the executive director to prepare an alternative order to be considered at a subsequent board meeting.

18.10(2) Authority discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the authority upon consideration of all relevant factors. The authority shall evaluate each petition for a waiver based on the unique, individual circumstances set out in the petition.

18.10(3) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the authority should exercise its discretion to grant a waiver from an authority rule.

18.10(4) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

18.10(5) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the authority shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

18.10(6) Conditions. The authority may place any condition on a waiver that the authority finds desirable to protect the public health, safety, and welfare.

18.10(7) 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 authority, a waiver may be renewed if the authority finds that grounds for a waiver continue to exist.

18.10(8) Time for ruling. The authority 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 authority shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

18.10(9) When deemed denied. Failure of the authority to grant or deny a petition within the required time period shall be deemed a denial of that petition by the authority. However, the authority shall remain responsible for issuing an order denying a waiver.

18.10(10) 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.