

CHAPTER 10  
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

**561—10.1(17A,455A) Applicability.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department. As used in this chapter, the term “director” includes the director’s designee. As used in this chapter, “waiver or variance” means an action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

**561—10.2(17A,455A) Authority.** A waiver or variance from rules adopted by the department may be granted in accordance with this chapter if:

**10.2(1)** The department has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and

**10.2(2)** The waiver or variance is consistent with any applicable statute, constitutional provision, or other provision of law. In addition, this subrule does not authorize the department to waive or vary any requirement created or duty imposed by statute.

**561—10.3(17A,455A) Interpretive rules.** The principles of statutory construction contained in Iowa Code chapter 4, “Construction of Statutes,” shall be used when determining whether these rules apply to a specific rule.

**561—10.4(17A,455A) Criteria for waiver or variance.** Upon petition of any person and at the sole discretion of the department, the department may issue a waiver or variance from the requirements of a rule if the director or the department in a contested case proceeding finds, based on clear and convincing evidence, all of the following:

**10.4(1)** The application of the rule would pose an undue hardship on the person for whom the waiver or variance is requested.

**10.4(2)** The waiver or variance from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person.

**10.4(3)** The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law.

**10.4(4)** 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 or variance is requested.

**561—10.5(17A,455A) Burden of persuasion.** The burden of persuasion rests with the person who petitions the department for the waiver or variance of a rule. Each petition for a waiver or variance shall be evaluated by the department based on the unique, individual circumstances set out in the petition. A waiver or variance, if granted, shall be drafted by the department so as to provide the narrowest exception possible to the provisions of the rule. The department may place any condition on a waiver or a variance that the department finds desirable to protect the public health, safety, and welfare. A waiver or variance shall not be permanent unless the petitioner can show that a temporary waiver or variance would be impracticable, and, in any event, shall not exceed one year in accordance with the provisions of Iowa Code section 455B.143. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver or variance may be renewed if the department finds all of the factors set out in rule 10.4(17A,455A) remain valid.

**561—10.6(17A,455A) Special waiver or variance rules not precluded.** This chapter shall not preclude the department from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so, and the director deems it appropriate to do so.

**561—10.7(17A,455A) Administrative deadlines.** When the rule from which a waiver or variance is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons governed by the particular rule.

**561—10.8(17A,455A) Filing of petition.** A petition for a waiver or variance shall be submitted in writing to the department as follows:

**10.8(1) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding. The department may elect not to rule on the waiver petition until the resolution of the contested case proceeding.

**10.8(2) Other.** If the petition does not relate to a pending contested case, the petition may be submitted to the director.

**561—10.9(17A,455A) Contents of petition.** A petition for waiver or variance shall include the following information when applicable and known to the petitioner:

**10.9(1)** The name, address, and telephone number of the entity or person for whom a waiver or variance is requested, and the case number of any related contested case.

**10.9(2)** A description and citation of the specific rule from which a waiver or variance is requested.

**10.9(3)** The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

**10.9(4)** The relevant facts that the petitioner believes would justify a waiver or variance. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver or variance.

**10.9(5)** A history of any prior contacts between the department and the petitioner for the past five years, including a description of each affected permit held by the petitioner, and any notices of violation, administrative orders, contested case proceedings, and lawsuits involving the department and the petitioner.

**10.9(6)** Any information known to the petitioner regarding the department's treatment of similar cases.

**10.9(7)** The name, address, and telephone number of any public agency or political subdivision of the state or federal government which also regulates the activity in question, or which might be affected by the granting of a waiver or variance.

**10.9(8)** The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

**10.9(9)** The name, address, and telephone number of any person with knowledge of relevant facts relating to the proposed waiver or variance.

**10.9(10)** Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

**561—10.10(17A,455A) Additional information.** Prior to issuing a decision granting or denying a waiver or variance, the department 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 director may, on the director's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director.

**561—10.11(17A,455A) Notice.** The petitioner, within 30 days of submission of the petition, shall serve by certified mail notice of the pending petition and a concise summary of its contents upon all persons to whom notice is required by any provision of law. The petitioner shall provide a written statement to the department attesting that the required notice has been provided. The department shall acknowledge a petition upon receipt and, in addition, the department may give notice to other persons.

**561—10.12(17A,455A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver or variance of a rule filed within a contested case and shall otherwise apply to department proceedings for a waiver or variance only when the department so provides by rule or order or is required to do so by statute.

**561—10.13(17A,455A) Ruling.** A decision granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the decision pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**561—10.14(17A,455A) Conditions.** The department may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**561—10.15(17A,455A) Time for ruling.** The department shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of receipt of the petition, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**561—10.16(17A,455A) When deemed denied.** Failure of the director or the department in a contested case proceeding to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department.

**561—10.17(17A,455A) Service of decision.** Within seven days of its issuance, any decision issued under this chapter shall be transmitted to the petitioner or the person to whom the decision pertains and to any other person entitled to such notice by any provision of law.

**561—10.18(17A,455A) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)“e,” the department shall maintain a record of all decisions granting and denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public.

**561—10.19(17A,455A) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The department may at any time cancel a waiver or variance if the department finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the waiver or variance.

**561—10.20(17A,455A) Violations.** Violation of conditions of the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

**561—10.21(17A,455A) Defense.** After the department issues a decision granting a waiver or variance, the decision is a defense within its terms and the specific facts indicated therein for the person to whom the decision pertains in any proceeding in which the rule in question is sought to be invoked.

These rules are intended to implement Iowa Code chapters 17A, 21, 22, and 455A.

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CHAPTERS 11 to 13

Reserved