

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

Proposing rule making related to waivers and providing an opportunity for public comment

The Corrections Department hereby proposes to amend Chapter 7, “Waivers and Variances,” Chapter 50, “Jail Facilities,” and Chapter 51, “Temporary Holding Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 904.108.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

The proposed amendments update Chapters 7, 50, and 51 of the Department’s rules in accordance with changes included in 2020 Iowa Acts, House File 2389, section 10. The changes call for deletions of the word “variance” when the word is used in relation to “waiver.” Amendments are also proposed for the submission of information regarding waivers on the Legislative Services Agency’s Internet site.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 2, 2021. Comments should be directed to:

Michael Savala
Department of Corrections
Jesse Parker Building
510 East 12th Street
Des Moines, Iowa 50319
Email: michael.savala@iowa.gov

Public Hearing

If requested, a public hearing to hear requested oral presentations will be held on February 2, 2021, via conference call from 9 to 10 a.m. Persons who wish to participate in the conference call should contact Michael Savala before 4:30 p.m. on January 29, 2021, to facilitate an orderly hearing. A conference call

number will be provided to participants prior to the hearing. The public hearing will be canceled without further notice if no oral presentation is requested.

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **201—Chapter 7**, title, as follows:

~~WAIVERS AND VARIANCES~~

ITEM 2. Amend rule 201—7.1(904) as follows:

201—7.1(904) Definition. For purposes of this chapter, a “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. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 3. Amend rule 201—7.4(904) as follows:

201—7.4(904) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule [201—7.6\(904\)](#), the department may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

1. to 4. No change.

ITEM 4. Amend rule 201—7.5(904) as follows:

201—7.5(904) Filing of petition. A petition for a waiver must be submitted in writing to the department as follows:

7.5(1) and 7.5(2) No change.

7.5(3) File petition. A petition is deemed filed when it is received in the department's office. A petition should be sent to the Department of Corrections, ~~Policy and Legal Services Division, 420 Watson Powell Jr. Way~~ [510 E. 12th Street](#), Des Moines, Iowa 50309. The petition must conform to the form specified in rule [201—7.17\(904\)](#).

ITEM 5. Amend rule 201—7.12(904) as follows:

201—7.12(904) ~~Summary reports~~ Submission of waiver information. ~~Semiannually, the department shall prepare a summary report identifying~~ The department shall submit information about granted and denied waivers to the Internet site pursuant to Iowa Code section 17A.9A within 60 days. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department's actions on waiver requests. If practicable, the report submission shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself and the extent to which the granting of the waiver has established a precedent for additional waivers. ~~Copies of this report shall be available for~~

~~public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

ITEM 6. Amend rule 201—7.17(904) as follows:

201—7.17(904) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF CORRECTIONS	
Petition by (name of petitioner) for the waiver/ variance of (insert rule citation) relating to (insert the subject matter).	} PETITION FOR WAIVER/ VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver ~~or variance~~). Also provide the name, address, and telephone number of the petitioner’s legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in your answer all of the following:

- Why applying the rule would result in undue hardship to the petitioner;
- Why waiving the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- How 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.

5. Provide a history of any prior contacts between the department and petitioner relating to the regulated activity that would be affected by the waiver.

6. Provide information known to the petitioner regarding the department’s action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver ~~or variance~~.

9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s signature

Date

ITEM 7. Amend rule **201—50.1(356,356A)**, definition of “Waiver/~~variance~~,” as follows:

“~~Waiver/~~variance~~” means a waiver of a specific standard granted by the Iowa department of corrections in accordance with 201—Chapter 7.~~

ITEM 8. Amend subrule 50.2(4) as follows:

50.2(4) Other standards. Nothing contained in these standards shall be construed to prohibit local officials from adopting standards and requirements governing their employees and facilities, provided such standards and requirements exceed and do not conflict with standards mandated in this chapter. These standards shall not be construed as authority to violate any state fire safety standard, building

standard, health and safety code, or any constitutional requirement. No jail shall be operated without substantially meeting these rules, absent the granting of a waiver/~~variance~~.

ITEM 9. Amend subrule 50.24(6) as follows:

50.24(6) *Exemption from nonsecure hold standards.* Any requests for exemption from nonsecure hold standards shall be submitted according to the waiver and ~~variance~~ provisions under 201—Chapter 7, Iowa Administrative Code.

ITEM 10. Amend rule **201—51.1(356,356A)**, definition of “Waiver/~~variance~~,” as follows:

“~~Waiver/variance~~” means waiver of a specific standard granted by the jail inspection unit in accordance with these rules.