Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 10
"Waivers From Administrative Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.9A
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.9A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Des Moines, Iowa 50321
Email: tamara.mcintosh@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 10 sets forth the process for a person to petition the Department for a waiver from the requirements of an administrative rule. These rules are narrowly tailored to align with underlying statute. However, the Department has carefully reviewed the chapter for duplicity with statute and made edits consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

All persons seeking a waiver from a requirement of administrative rules will bear the costs. However, this chapter is procedural in nature and is easily met without significant costs. Persons or entities who want a waiver from a requirement of administrative rule must articulate how they satisfy the legal test contained in the Iowa Administrative Procedure Act.

- Classes of persons that will benefit from the proposed rulemaking:

All persons seeking a waiver from a requirement of administrative rules will benefit. The Department cannot grant rule waivers without promulgating rules stating how it will do so.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

This chapter is procedural in nature and is easily met without significant costs. Persons or entities who want a waiver from a requirement of administrative rule must articulate how they satisfy the legal test contained in the Iowa Administrative Procedure Act.

- Qualitative description of impact:

This chapter is procedural in nature and is easily met without significant costs. Persons or entities who want a waiver from a requirement of administrative rule must articulate how they satisfy the legal test contained in the Iowa Administrative Procedure Act.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Nominal. Existing staff who perform other duties also process administrative rule waivers.

- Anticipated effect on state revenues:

None.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Department cannot issue waivers in the absence of a rule setting forth the procedures around such a process. It is to everyone's benefit that the Department has Chapter 10.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

No. This chapter is required by state law before the Department can process rule waivers.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None. This chapter is required by state law before the Department can process rule waivers.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

See above.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There are no direct costs to small businesses from this chapter. In fact, this chapter is likely to their benefit. The Department cannot process rule waivers without first promulgating a chapter describing how it will do so.

Text of Proposed Rulemaking

ITEM 1. Rescind 561—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
WAIVERS FROM ADMINISTRATIVE RULES

561—10.1(17A) Criteria for waiver. Upon petition of any person and at the sole discretion of the department, the department may issue a waiver from the requirements of a rule if the director or the

director's designee or the department in a contested case proceeding finds, based on clear and convincing evidence, all of the factors as set forth in Iowa Code section 17A.9A(2).

561—10.2(17A) Burden of persuasion. The burden of persuasion rests with the person who petitions the department for the waiver of a rule consistent with Iowa Code section 17A.9A(3).

561—10.3(17A) Special waiver 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—10.4(17A) Administrative deadlines. When the rule from which a waiver 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—10.5(17A) Filing of petition. A petition for a waiver shall be submitted in writing to the department as follows:

10.5(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.

10.5(2) *Other.* If the petition does not relate to a pending contested case, the petition may be submitted to the director.

561—10.6(17A) Contents of petition. A petition for waiver shall include the following information when applicable and known to the petitioner:

10.6(1) The name, address, and telephone number of the entity or person for whom a waiver is requested, and the case number of any related contested case.

10.6(2) A description and citation of the specific rule from which a waiver is requested.

10.6(3) The specific waiver requested, including the precise scope and operative period that the waiver will extend.

10.6(4) The relevant facts that the petitioner believes would justify a waiver. 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.

10.6(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.

10.6(6) Any information known to the petitioner regarding the department's treatment of similar cases.

10.6(7) The name, address, and telephone number of any public agency or political subdivision of the state or federal government that also regulates the activity in question, or that might be affected by the granting of a waiver.

10.6(8) The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

10.6(9) The name, address, and telephone number of any person with knowledge of relevant facts relating to the proposed waiver.

10.6(10) Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

561—10.7(17A) Additional information. Prior to issuing a decision granting or denying a waiver, 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—10.8(17A) 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—10.9(17A) 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 of a rule filed within a contested case and shall otherwise apply to department proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

561—10.10(17A) Ruling. A decision 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 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—10.11(17A) Conditions. The department may condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

561—10.12(17A) Time for ruling. The department shall grant or deny a petition for a waiver 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—10.13(17A) 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—10.14(17A) 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—10.15(17A) 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 under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public.

561—10.16(17A) Voiding or cancellation. A waiver 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 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 have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the waiver.

561—10.17(17A) Violations. Violation of conditions of the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

561—10.18(17A) Defense. After the department issues a decision granting a waiver, 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 chapter 17A.