

CHAPTER 3
RULEMAKING AND RULE WAIVER PROCEDURES

Chapter rescission date pursuant to Iowa Code section 17A.7: 3/26/30

701—3.1(99G,123,421,17A) Applicability and scope of rules. These rules implement the Iowa administrative procedure Act and aid in the effective and efficient administration and enforcement of the laws of this state and other activities of the department. These rules govern the practice, procedure, and conduct of the rulemaking and requests for waiver of rules and certain other administrative procedures within the department’s jurisdiction. 701—Chapters 6 and 7 contain rules on contested cases for all matters within the department’s jurisdiction. 701—Chapter 4 contains rules on declaratory orders for all matters within the department’s jurisdiction.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—3.2(99G,123,421,17A) Definitions. Terms not defined below have the same meaning as defined in Iowa Code chapter 17A. These definitions apply to this chapter unless the text states otherwise:

“*Department*” means the Iowa department of revenue.

“*Director*” means the director of the department or the director’s designee.

“*GovConnectIowa*” means the e-services portal of the department.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—3.3(99G,123,421,17A) Department procedure for rulemaking.

3.3(1) *Advice on possible rules before notice of proposed rule adoption.* In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rulemaking by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

The department may send notices of proposed rulemaking and a request for comments to any agency, organization, or association known to the department to have a direct interest or expertise pertaining to the substance of the proposed rule.

3.3(2) *Public rulemaking docket.* The department utilizes the public rulemaking docket available to all agencies on the Iowa legislature’s website.

3.3(3) *Notice of proposed rulemaking.*

a. Contents. Except for rules filed through emergency rulemaking, at least 35 days before the adoption of a rule, the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- (1) A brief explanation of the purpose of the proposed rule.
- (2) The specific legal authority for the proposed rule.
- (3) Except to the extent impracticable, the text of the proposed rule.
- (4) Where, when, and how persons may present their views on the proposed rules.
- (5) Where, when, and how persons may demand an oral proceeding on the proposed rule if the Notice does not already provide for one.

Where the inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the Notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

b. Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements in subrule 3.3(11) applicable to the incorporation by reference of other materials in an adopted rule.

c. Registration for Notices of Intended Action. Any person may register on the department’s website to receive announcements related to rules from the department. Persons registered to receive

announcements from the department will be notified of the publication of the department's Notices of Intended Action and Adopted and Filed rules. Persons who desire to request a paper copy of any rule filing need to make a request to the department's administrative rules coordinator, in writing or by email. The request must specify the rules requested and specify the number of copies. The requester will reimburse the department for the actual costs incurred in providing copies.

3.3(4) Public participation.

a. Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit arguments, proposed alternatives, data, and views, in writing or via email, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the person designated on the Notice of Intended Action, or to the attention of the department's administrative rules coordinator, at the address provided in 701—paragraph 7.3(1)“c” or by email to the address provided in 701—paragraph 7.3(1)“b.”

b. Oral proceedings. The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must contain the following information:

(1) A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

(2) A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

(3) A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing the request.

c. Conduct of oral proceedings.

(1) *Applicability.* This subrule applies only to those oral rulemaking proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b” or this chapter.

(2) *Scheduling and notice.* An oral proceeding on a proposed rule may be held in person, virtually, or both, as decided by the department. The proceeding shall not be held earlier than 20 days after the related Notice of Intended Action is published in the Iowa Administrative Bulletin.

(3) *Presiding officer.* An employee of the department shall preside at the oral proceeding on a proposed rule.

(4) *Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include arguments, proposed alternatives, data, and views concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

1. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of both themselves and other individuals.

2. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.

3. To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

4. The presiding officer has the authority to take any reasonable action necessary for the orderly conduct of the meeting.

5. Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the department.

6. The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

7. Participants in an oral proceeding do not need to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rulemaking proceeding, including any prior written submissions made by those participants in that proceeding. No participant is required to answer any question.

8. The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

d. Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

e. Accessibility. The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person listed on the Notice of Intended Action or the department's administrative rules coordinator in advance to arrange access or other needed services.

3.3(5) Regulatory analysis.

a. Submission. The department shall issue a regulatory analysis of a proposed rule prior to submitting a notice of intended action to the governor's administrative rules coordinator and the administrative code editor pursuant to Iowa Code section 17A.4(1).

b. Contents. An issued regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2) "a."

c. Public participation. For at least 20 days after publication of the regulatory analysis, persons may submit arguments, proposed alternatives, data, and views, on the regulatory analysis. The regulatory analysis shall state the time when, the place where, and the manner in which interested persons may provide written comment or oral presentation.

3.3(6) Fiscal impact statement. A rule that mandates additional combined expenditures exceeding \$100,000 or combined expenditures of at least \$500,000 within five years, by all affected political subdivisions, or by agencies and entities that contract with political subdivisions to provide services, must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

3.3(7) Time and manner of rule adoption.

a. Time of adoption. The department may only adopt a rule once the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings, the department shall adopt a rule pursuant to the rulemaking proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

b. Consideration of public comment. Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rulemaking proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rulemaking proceeding.

c. Reliance on department expertise. Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

3.3(8) Variance between adopted rule and published notice of proposed rule adoption.

a. Allowable variances. The department may only adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based if:

(1) The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that Notice; and

(2) The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and

(3) The Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.

b. Fair warning. In determining whether the Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question, the department shall consider the following factors:

(1) The extent to which persons who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interests.

(2) The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.

(3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

c. Petition for rulemaking. The department shall commence a rulemaking proceeding within 60 days of its receipt of a petition for rulemaking seeking the amendment or rescission of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rulemaking proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the governor's administrative rules coordinator, and the administrative rules review committee within three days of its issuance.

d. Concurrent rulemaking proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rulemaking proceedings on the same subject with several different published Notices of Intended Action.

3.3(9) Exemptions from public rulemaking procedures, emergency rulemaking.

a. Omission of notice and comment. To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, and with the prior approval of the administrative rules review committee and governor's administrative rules coordinator, or if a statute so provides, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. Public proceedings on rules adopted without them. The department may, at any time, commence a standard rulemaking proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon paragraph 3.3(9)"a." After a standard rulemaking proceeding commenced pursuant to this subrule, the department may take any other lawful action, including the amendment or rescission of the rule in question, with whatever further proceedings are appropriate.

3.3(10) Concise statement of reasons.

a. General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered by mail to the address listed in paragraph 7.3(1)"c" or by email to the person listed on the adopted rule filing or to the department's administrative rules coordinator at the address provided in paragraph 7.3(1)"b." The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received in accordance with rule 701—7.4(17A).

b. Contents. The concise statement of reasons shall contain:

(1) The reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change;

(3) The principal reasons urged in the rulemaking proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

c. Time of issuance. After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

3.3(11) *Contents, style, and form of rule.*

a. Contents. Each rule adopted by the department shall contain the text of the rule and, in addition:

(1) The date the department adopted the rule;

(2) A brief explanation of the principal reasons for the rulemaking action if the reasons are required by Iowa Code section 17A.4(2) or the department in its discretion decides to include the reasons;

(3) A reference to all rules rescinded, amended, or suspended by the rule;

(4) A reference to the specific statutory or other authority authorizing adoption of the rule;

(5) Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

(6) A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by Iowa Code section 17A.4(2), or the department in its discretion decides to include the reasons; and

(7) The effective date of the rule.

b. Incorporation by reference. The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, as applicable. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department. If the department adopts standards by reference to another publication, it shall post the publication containing the standards on the department's website.

c. References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department shall post the full text available for review on the department's website. At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

3.3(12) *Filing of rules.* The department shall file each rule it adopts in the office of the governor's administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have included with it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative code editor.

3.3(13) *Effectiveness of rules prior to publication, emergency rulemaking.*

a. Grounds. The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

b. Special notice. When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b,” the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b” shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of paragraph 3.3(13)“b.”

3.3(14) Review of rules by department. Over each five-year period of time, the department shall perform a retrospective analysis pursuant to Iowa Code section 17A.7(2) that includes a comprehensive evaluation and rigorous cost-benefit analysis of each existing chapter of rules to determine whether the benefits the rules are intended to achieve are being realized, whether those benefits justify the costs imposed by the rules, and whether there are less restrictive alternatives to accomplish those benefits. When the department’s five-year review of its rules is completed, the department shall summarize the results and provide the written summary to the governor’s administrative rules coordinator and the administrative rules review committee.

This rule is intended to implement Iowa Code chapter 17A and sections 123.10 and 421.14.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—3.4(99G,123,421,17A) Docket. All review requests, public inquiries, petitions, and waivers coming within the purview of this chapter are assigned a docket number that is the official identification number of the matter for the purposes of identification. The parties will be notified of the docket number. The number will be placed by the parties on all documents thereafter filed in the proceeding.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—3.5(99G,123,421,17A) Public inquiries on rulemaking and the rulemaking records. The department maintains records in accordance with the State Records Manual and agency retention schedule described in rule 671—2.2(305).

This rule is intended to implement Iowa Code section 17A.3.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—3.6(99G,123,421,17A) Petition for rulemaking.

3.6(1) Filing, form, and contents of petition.

a. Filing. Any person or agency may file a petition for rulemaking using one of the methods described in subrule 7.3(1).

b. Department forms. A petition may be filed using the form available on GovConnectIowa. Alternatively, a petition may be filed using the form or the GovConnectIowa petition link found on the department’s website, revenue.iowa.gov.

c. Manually created petitions.

(1) Persons who do not use the filing methods outlined in paragraph 3.6(1)“b” shall use the following format to submit a petition for rulemaking:

DEPARTMENT OF REVENUE

Petition by (Name of Petitioner)	*	PETITION FOR
for the (adoption, amendment, or	*	RULEMAKING
rescission) of rules relating to (state	*	
subject matter).	*	

(2) The petition must provide the following information:

1. A statement of the specific rulemaking action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or rescind a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or rescinded.

2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.

3. A brief summary of the petitioner's arguments in support of the action urged in the petition.

4. A brief summary of any data supporting the action urged in the petition.

5. A complete history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed rulemaking, including audits, notices of assessment, refund claims, appeals, contested case hearings, or investigative reports relating to the activity within the last five years.

6. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by or interested in the proposed action that is the subject of the petition.

7. Any request by the petitioner for a meeting.

8. Any other matters deemed relevant that are not covered by the above requirements.

d. File-stamped copy. The department will provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose.

3.6(2) Form signed and dated. The petition must be signed and dated by the petitioner or the petitioner's representative. It must also include the name, mailing address, telephone number, and email address of the petitioner and of the petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

3.6(3) Denial by department. The department may deny a petition because it does not substantially conform to the required form or because all the required information has not been provided.

3.6(4) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

3.6(5) Status of petition. Inquiries concerning the status of a petition for rulemaking may be made to the department's administrative rules coordinator by mail at the address listed in paragraph 7.3(1) "c" or by email to the address provided in paragraph 7.3(1) "b."

3.6(6) Informal meeting. If requested in the petition by the petitioner, the department may schedule an informal meeting between the petitioner and the department, or a member of the staff of the department, to discuss the petition. The department may request that the petitioner submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

3.6(7) Action required. Within 60 days after the filing of the petition, or within an extended period as agreed to by the petitioner, the department must, in writing, either (a) deny the petition and notify the petitioner of the department's action and the specific grounds for the denial or (b) grant the petition and notify the petitioner that the department has instituted rulemaking proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial of the petition or the granting of the petition on the date that the department mails or delivers the required notification to the petitioner. All orders granting or denying a petition shall be submitted to the administrative rules review committee.

3.6(8) New petition. Denial of a petition because the petition does not substantially conform to the required form does not preclude the filing of a new petition on the same subject when the new petition contains the required information that was the basis for the original denial.

This rule is intended to implement Iowa Code chapter 17A.
[ARC 8944C, IAB 2/19/25, effective 3/26/25]

701—3.7(99G,123,421,17A) Waiver of certain department rules. All discretionary rules or discretionary provisions in a rule over which the department has jurisdiction, in whole or in part, may be subject to waiver.

3.7(1) Definitions. The following terms apply to the interpretation and application of this rule:

“Discretionary rule” or *“discretionary provisions in a rule”* means rules or provisions in rules resulting from a delegation by the legislature to the department to create a binding rule to govern a given issue or area. The department is not interpreting any statutory provision of the law promulgated by the legislature in a discretionary rule. Instead, a discretionary rule is authorized by the legislature when the legislature has delegated the creation of binding rules to the department and the contents of such rules are at the discretion of the department. A rule that contains both discretionary and interpretive provisions is deemed to be a discretionary rule to the extent of the discretionary provisions in the rule.

“Interpretive rules” or *“interpretive provisions in a rule”* means rules or provisions in rules that define the meaning of a statute or other provision of law or precedent where the department does not possess the delegated authority to bind the courts to any extent with its definition.

“Waiver” means a department action that 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.

3.7(2) Scope of rule.

a. This rule creates generally applicable standards and a generally applicable process for granting individual waivers from the discretionary rules or discretionary provisions in rules adopted by the department in situations where no other specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this rule with respect to any waiver from that rule.

b. The waiver provisions set forth in this rule do not apply to rules over which the department does not have jurisdiction or when issuance of the waiver would be inconsistent with any applicable statute, constitutional provision, or other provision of law.

3.7(3) Applicability of this rule.

a. This rule applies only to waiver of those rules that are within the exclusive rulemaking authority of the department. This rule shall not apply to interpretive rules that merely interpret or construe the meaning of a statute, or other provision of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its interpretation or construction. Thus, this waiver rule applies to discretionary rules and discretionary provisions in rules and not to interpretive rules.

b. The application of this rule is strictly limited to petitions for waiver filed outside of a contested case proceeding. Petitions for waiver from a discretionary rule or discretionary provisions in a rule filed after the commencement of a contested case as provided in rule 701—7.15(17A) will be treated as an issue of the contested case to be determined by the presiding officer of the contested case.

3.7(4) Authority to grant a waiver. The director may not issue a waiver under this rule unless:

a. The legislature has delegated authority sufficient to justify the action; and
b. The waiver is consistent with statutes and other provisions of law. No waiver from any mandatory requirement imposed by statute may be granted under this rule.

3.7(5) Criteria for waiver. In response to a petition, the director may, in the director’s sole discretion, issue an order granting a waiver from a discretionary rule or a discretionary provision in a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the director finds that the waiver is consistent with subrules 3.7(3) and 3.7(4) and if all of the following criteria are also met:

a. The waiver would not prejudice the substantial legal rights of any person;
b. The rule or provisions of the rule are not specifically mandated by statute or another provision of law;
c. The application of the rule or rule provision would result in an undue hardship or injustice to the petitioner; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule or rule provision for which the waiver is requested.

3.7(6) Director’s discretion. The final decision to grant or deny a waiver shall be vested in the director. This decision shall be made at the sole discretion of the director based upon consideration of relevant facts.

3.7(7) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant the petitioner a waiver based upon the criteria contained in subrule 3.7(5).

3.7(8) Form and contents of petition.

a. *Department forms.* A petition for waiver may be filed using the form available on GovConnectIowa. Alternatively, a petition for waiver may be filed using the form or the GovConnectIowa petition link found on the department’s website, revenue.iowa.gov.

b. *Manually created petitions.*

(1) Persons who do not use the filing methods outlined in paragraph 3.7(8)“a” shall use the following format to submit a petition for waiver:

DEPARTMENT OF REVENUE		
Name of Petitioner	*	PETITION FOR
Address of Petitioner	*	WAIVER
	*	Docket No. _____
	*	

(2) A manually created petition for waiver must contain all of the following, where applicable and known to the petitioner:

1. The name, address, email address, telephone number, and case number or state identification number of the entity or person for whom a waiver is being requested;
2. A description and citation of the specific rule or rule provisions from which a waiver is being requested;
3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend;
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 represented in the petition and a statement of reasons that the petitioner believes will justify a waiver;
5. A complete history of any prior contacts between the petitioner and the department relating to the activity or license affected by the proposed waiver, including audits, notices of assessment, refund claims, appeals, a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years;
6. Any information known to the petitioner relating to the department’s treatment of similar cases;
7. The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver;
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver;
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver;
10. Signed releases of information authorizing persons with knowledge of relevant facts to furnish the department with information relating to the waiver; and
11. The signature of the petitioner or the petitioner’s representative and date of signature. It must also include the name, mailing address, and telephone number of the petitioner and of the petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed. Petitions submitted by a representative must have a valid IDR +power of attorney form or representative certification form, as applicable in accordance with rule 701—7.6(17A), on file with the department.

3.7(9) *Filing of petition.* A petition for waiver must be filed using one of the methods described in subrule 7.3(1).

3.7(10) *Additional information.* Prior to issuing an order granting or denying a waiver, the director may request additional information from the petitioner relating to the petition and surrounding circumstances. 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 or the petitioner's representative, or both, and the director to discuss the petition and surrounding circumstances.

3.7(11) *Notice of petition for waiver.* If notice to others is required by law, the petitioner shall provide, within 30 days of filing the petition for waiver, a notice consisting of a concise summary of the contents of the petition for waiver and stating that the petition is pending. Such notice shall be mailed by the petitioner to all persons entitled to such notice. Such persons to whom notice must be mailed include, but are not limited to, the director and all parties to the petition for waiver, or the parties' representatives. The petitioner must then file written notice to the department's legal services section by mail to the address listed in paragraph 7.3(1)"c" or by email to the address provided in paragraph 7.3(1)"b," attesting that the notice has been mailed. The names, addresses and telephone numbers of the persons to whom the notices were mailed shall be included in the filed written notice. The department has the discretion to give such notice to persons other than those persons notified by the petitioner.

3.7(12) *Ruling on a petition for waiver.* An order granting or denying a waiver must conform to the following:

a. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or rule provision to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the narrow and precise scope and operative time period of a waiver, if one is issued.

b. Conditions. The director may condition the grant of a waiver on any conditions that the director deems to be reasonable and appropriate in order to protect the public health, safety, and welfare.

3.7(13) *Time period for waiver; extension.* Unless otherwise provided, an order granting a petition for waiver will be effective for 12 months from the date the order granting the waiver is issued. Renewal of a granted waiver is not automatic. To renew the waiver beyond the 12-month period, the petitioner must file a new petition requesting a waiver. The renewal petition will be governed by the provisions in this rule and must be filed prior to the expiration date of the previously issued waiver or extension of waiver. Even if the order granting the waiver was issued in a contested case proceeding, any request for an extension shall be filed with and acted upon by the director. However, renewal petitions must request an extension of a previously issued waiver. Granting the extension of the waiver is at the director's sole discretion and must be based upon whether the factors set out in subrules 3.7(4) and 3.7(5) remain valid.

3.7(14) *Time for ruling.* The director shall grant or deny a petition for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees in writing to a later date or the director indicates in a written order that it is impracticable to issue the order within the 120-day period.

3.7(15) *When deemed denied.* Failure of the director to grant or deny a waiver within the 120-day period or the extended time period shall be deemed a denial of that petition.

3.7(16) *Service of orders.* Within seven days of its issuance, any order issued under this rule 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.

3.7(17) *Recordkeeping.* The department is required to maintain a record of all petitions for waiver and rulings granting or denying petitions for waiver.

a. *Petitions for waiver.* The department shall maintain a record of all petitions for waiver available for public inspection. Such records will be indexed and filed and made available for public inspection.

b. *Report of orders granting or denying a waiver.* All orders granting or denying a waiver shall be submitted on the Internet site as prescribed in Iowa Code section 17A.9A.

3.7(18) *Cancellation of waiver.* A waiver issued pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice, the director issues an order finding any of the following:

- a.* The person who obtained the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b.* The alternative means for ensuring that public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient, and no other means exist to protect the substantial legal rights of any person; or
- c.* The person who obtained the waiver has failed to comply with all of the conditions in the waiver order.

3.7(19) *Violations.* A violation of a condition in a waiver order shall be treated as a violation of the particular rule or rule provision for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule or rule provision at issue.

3.7(20) *Defense.* After an order granting a waiver is issued, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked unless subrules 3.7(18) and 3.7(19) are applicable.

3.7(21) *Hearing and appeals.*

a. Appeals from a decision granting or denying a waiver in a contested case proceeding shall be in accordance with the rules governing hearings and appeals from decisions in contested cases. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver request, unless a different time is provided by rule or statute, such as provided in the area of license revocation (more information is contained in rule 701—7.26(17A)).

b. The provisions of Iowa Code sections 17A.10 through 17A.18A and rule 701—7.18(17A) regarding contested case proceedings shall apply to any petition for waiver of a rule or provisions in a rule filed within a contested case proceeding. A petition for waiver of a provision in a rule outside of a contested case proceeding will not be considered under the statutes or rule 701—7.18(17A). Instead, the director’s decision on the petition for waiver is considered to be “other agency action.”

This rule is intended to implement Iowa Code section 17A.9A.

[ARC 8944C, IAB 2/19/25, effective 3/26/25]

These rules are intended to implement Iowa Code chapter 17A.

[Filed ARC 8944C (Notice ARC 8355C, IAB 11/13/24), IAB 2/19/25, effective 3/26/25]