

CHAPTER 11
WAIVER OF RULES

Chapter rescission date pursuant to Iowa Code section 17A.7: 8/27/30

761—11.1(17A) General.

11.1(1) Purpose. The purpose of this chapter is to establish a general process for granting waivers from the requirements of department rules in accordance with Iowa Code section 17A.9A.

11.1(2) Scope. This chapter does not:

a. Preclude the granting of waivers using another process if a statute or another department rule so provides. If the rule for which a waiver is sought has a specific waiver process of its own, this chapter is applicable only when it is specifically cited.

b. Apply to contested case proceedings.

c. Apply to rules that merely define the meaning of a statute or other provision of law if the department does not possess the delegated authority to bind the courts to any extent with its definition.

11.1(3) Definition.

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

[ARC 9445C, IAB 7/23/25, effective 8/27/25]

761—11.2(17A) Petition for waiver.

11.2(1) Petitioner. Any person with a real and direct interest in the matter may petition the department for a waiver from the requirements of a rule.

11.2(2) Form of petition. A petition for a waiver from the requirements of a rule must be in writing and state clearly at the top of the petition that it is a “petition for waiver of a rule.” The petition shall contain the following information where applicable and known to the petitioner:

a. The name, address and telephone number of the petitioner, and any license, permit or case number applicable to the requested waiver.

b. A description of and citation to the specific rule from which a waiver is requested.

c. The specific waiver requested, including its scope and duration.

d. The relevant facts and reasons the petitioner believes would justify the requested waiver and address each of the following:

(1) Why applying the rule will result in an undue hardship to the petitioner.

(2) Why waiving the rule will not prejudice the substantial legal rights of any other person.

(3) Whether the provisions of the rule are specifically mandated by statute or another law other than the rule.

(4) How substantially equal protection of the public health, safety and welfare will be afforded by means other than those prescribed by the rule.

e. A history of any prior contacts between the petitioner and the department that are related to the requested waiver.

f. Whether the petitioner is currently a party to a rulemaking, declaratory order, contested case, judicial proceeding or any other proceeding related to the requested waiver.

g. Information regarding the department’s treatment of similar situations.

h. The name, address and telephone number of any public agency or political subdivision that also regulates the activity in question or that may be affected if the waiver were granted.

i. The name, address and telephone number of any person or entity that may be adversely affected if the waiver were granted.

j. The name, address and telephone number of any person who has knowledge of facts relevant to the requested waiver.

k. Releases authorizing persons with knowledge of relevant facts to furnish that information to the department.

l. The signature of the petitioner and the date signed.

11.2(3) *Submission of petition.* A petition for waiver from the requirements of a rule shall be submitted to the rules administrator either by mail to Rules Administrator, Office of the Director, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator's email address listed on the department's website at [iowadot.gov/administrativerules](mailto:rules@iowadot.gov).

[ARC 9445C, IAB 7/23/25, effective 8/27/25]

761—11.3(17A) Action on petition and decision on waiver.

11.3(1) The director may, in response to a written petition submitted in accordance with rule 761—11.2(17A), grant a waiver from the requirements of a rule. The decision to grant a waiver is made at the sole discretion of the director and is final agency action.

11.3(2) The following is the procedure for responding to a petition for a waiver from the requirements of a rule:

- a. The department will acknowledge receipt of a petition within five days of receipt.
- b. Before a waiver is granted or denied, the department may request a petitioner to furnish additional information related to the petition.
- c. The director will issue a written decision to grant or deny a waiver within 120 days after the department acknowledges receipt of the petition unless the petitioner agrees to a later time. However, if the matter is also the subject of a contested case proceeding, the decision to grant or deny a waiver need not be issued until after the final decision in the contested case is issued.
- d. The director's decision to grant or deny a waiver in response to a written petition will be in writing and contain:
 - (1) The name of the person to whom the decision pertains.
 - (2) A citation to the rule or portion thereof to which the decision pertains and a brief summary of the rule's requirements that are pertinent to the requested waiver.
 - (3) The relevant facts and reasons upon which the decision is based. If a waiver is granted, the decision needs to include the findings set out in Iowa Code section 17A.9A(2).
 - (4) The scope and duration of a waiver if one is granted.
 - (5) Any other conditions placed on a waiver if one is granted.
- e. Within seven days after the decision is issued, the department will transmit it to the petitioner.
- f. Failure to grant a waiver within the time specified in paragraph 11.3(2) "c" is deemed a denial.
- g. A petition for a waiver from the requirements of a rule is independent of a contested case proceeding. Submission of a petition does not delay the time to request a contested case hearing, to appeal a proposed decision in a contested case, or to file a petition for judicial review of a final decision in a contested case.
- h. A petition for a waiver from the requirements of a rule is not needed to exhaust administrative remedies before judicial review of a department action under Iowa Code section 17A.19.

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761—11.4(17A) Modification or cancellation of waiver. The department may, after notice and opportunity for hearing, modify or cancel a waiver granted pursuant to this chapter if the director finds any of the following:

1. A material fact upon which the waiver is based is not true or has changed.
2. The petitioner withheld or knowingly misrepresented a material fact relevant to the propriety or desirability of the waiver.
3. The petitioner has failed to comply with the conditions set forth in the decision granting the waiver.
4. The alternate means for ensuring that the public health, safety and welfare will be adequately protected after the waiver is granted are insufficient.

[ARC 9445C, IAB 7/23/25, effective 8/27/25]

761—11.5(17A) Records.

11.5(1) All records relating to waivers granted or denied under this chapter are open records. However, if a record contains personal information that is confidential, only the portion of the record that is nonconfidential will be made available for public inspection.

11.5(2) The department's rules administrator will, at a minimum, retain for five years records relating to waivers granted or denied under this chapter.

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These rules are intended to implement Iowa Code section 17A.9A.

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