

CHAPTER 7
WAIVER RULES

421—7.1(17A) Definition. The term “waiver” as used in this chapter means a prescribed waiver from a specific rule or set of rules of this department applicable only to an identified person on the basis of the particular circumstances of that person.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—7.2(17A) Scope of chapter. This chapter creates generally applicable standards and a generally applicable process for granting individual waivers from rules adopted by the department in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this chapter with respect to any waiver from that rule.

421—7.3(17A) Applicability. This chapter applies only to waivers of those administrative rules that are within the exclusive rule-making authority of the department. This chapter shall not apply to rules that merely define the meaning of a statute, or other provisions of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its definition.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—7.4(17A) Compliance with law. The department may not issue a waiver under this chapter unless (1) the legislature has delegated authority sufficient to justify the action; and (2) the waiver is consistent with statute and other provisions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

421—7.5(17A) Criteria for a waiver. The department may issue an order, in response to a completed petition, granting a waiver from a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the department finds that the waiver is consistent with rules 421—7.3(17A) and 421—7.4(17A), that the waiver would not prejudice the substantial legal rights of any person, and either that:

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or
2. The following criteria have been met:
 - The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and
 - The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest.

In determining whether a waiver would be consistent with the public interest, the department shall consider whether, if a waiver is granted, the public health, safety, and welfare will be adequately protected by other means that will ensure a result that is substantially equivalent to full compliance with the rule.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—7.6(17A) Department discretion. The final decision to grant or deny a waiver shall be vested in the department director. This decision shall be made at the discretion of the department upon consideration of relevant facts.

421—7.7(17A) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the department should exercise its discretion to grant a waiver based upon the criteria contained in rule 7.5(17A) of this chapter.

421—7.8(17A) Contents of petition. A petition for a waiver shall include the following information where applicable and known to the requester:

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.

2. A description and citation of the specific rule or set of rules from which a waiver is 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 history of any prior contacts between the petitioner and the department relating to the activity affected by the proposed waiver, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the past five years.
6. Any information known to the requester relating to the department's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.
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 the waiver request to furnish the department with information relevant to the waiver.

421—7.9(17A) Additional information. Prior to issuing an order 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 department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative from the department to discuss the petition and surrounding circumstances.

421—7.10(17A) Notice. The department shall acknowledge the petition upon receipt. The department shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting to the fact that notice has been provided.

421—7.11(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for waiver of a rule or set of rules 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 or other binding law.

421—7.12(17A) Ruling. An order 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 order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative time period of a waiver if one is issued.

421—7.13(17A) Conditions. The department may condition the granting of the waiver on such conditions that the department deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

421—7.14(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 its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, then the department may grant or deny the petition at the time the final decision in that contested case is issued.

421—7.15(17A) When deemed denied. Failure of the department to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department. However, the department shall remain responsible for issuing an order denying a waiver as required by rule 7.12(17A).

421—7.16(17A) Service of orders. Within seven days of its issuance, any order issued under this chapter 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.

421—7.17(17A) Submission of waiver information. Within 60 days of granting or denying a waiver, the department shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. 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 shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—7.18(17A) Cancellation of a waiver. A waiver issued by the department pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the department issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld from the department or knowingly misrepresented to the department material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means of ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient, and no other means exists to protect the substantial legal rights of any person; or
3. The subject of the waiver order has failed to comply with all of the conditions contained in the order.

421—7.19(17A) Violations. A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

421—7.20(17A) Defense. After the department issues an order granting a waiver, 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.

421—7.21(17A) Appeals. Appeals within the department from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and department rules. 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.

These rules are intended to implement Iowa Code section 17A.9A and Executive Order Number 11.

[Filed 3/16/01, Notice 2/7/01—published 4/4/01, effective 5/9/01]

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]