

CHAPTER 41
REQUEST FOR WAIVER OR VARIANCE OF ADMINISTRATIVE RULE

871—41.1(17A,ExecOrd11) Requests for waiver or variance of rules. Any person may file a request for waiver or variance of an administrative rule of the Workforce Development Department[871], Iowa Administrative Code, by writing a proper request which is received by the Division Administrator, Division of Unemployment Insurance Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All requests for waiver or variance of an administrative rule must be in writing and meet all requirements set out in this chapter. A request is deemed filed when it is received by the division administrator. The agency shall provide the requester with a file-stamped copy of the request if the requester provides the agency an extra copy for this purpose. The request must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA WORKFORCE DEVELOPMENT	
(Name of person requesting waiver or variance)	} Request for waiver or variance of (specify rule for which waiver or variance is requested)

The petition must provide the following information:

1. The name and address of the person or entity for whom a waiver or variance is requested.
2. A description and citation of the specific rule for which a waiver or variance is requested.
3. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
4. Relevant facts that the requester believes would justify a waiver or variance. 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 the petitioner believes will justify a waiver or variance.
5. A history of the agency’s action relative to the requester.
6. Any information regarding the agency’s treatment of similar cases, if known.
7. The name, address and telephone number of any person inside or outside state government who would be adversely affected by the grant of the request, or who otherwise possesses knowledge of the matter with respect to the waiver or variance request.
8. Signed release of information authorizing persons with knowledge regarding requests to furnish the agency with information pertaining to the waiver or variance, if necessary.

871—41.2(17A,ExecOrd11) Procedural requirements.

41.2(1) The department shall acknowledge a request upon receipt. Within 30 days after receipt of a request for waiver or variance of an administrative rule, the agency shall ensure that the requester has provided a copy of the request to all persons who are required to receive one by provision of law. The agency may also require the requester to give notice to send a copy of the request to other persons who would have an interest in the subject matter.

41.2(2) The agency shall grant or deny a request for waiver or variance of all or a portion of a rule as soon as practical but, in any event, shall do so within 120 days of its receipt, unless requester agrees to a later date. However, if a waiver or variance request has been filed in a contested case proceeding, the agency shall grant or deny the request no later than the time at which the final decision in that contested case is issued. Failure of the agency to grant or deny such a request within the required time period shall be deemed a denial of that request by the agency. If the request for waiver or variance relates to a time requirement of an administrative rule, the request must be received before the time specified in the rule has expired. Within seven days of its issuance, any response issued under this rule shall be transmitted, normally by depositing it in the mail, to the requester or the person to whom the response pertains and to any other person entitled to such notice by any provision of law.

871—41.3(17A,ExecOrd11) Criteria for waiver or variance.

41.3(1) The director of the workforce development department shall make a decision as to whether circumstances justify the granting of a waiver or variance. Waivers or variances are granted at the discretion of the director after consideration of relevant facts. The requester shall assume the burden of persuasion with regard to a request for waiver or variance of an administrative rule. The person requesting the waiver or variance of the rule must provide clear and convincing evidence that compliance with the rule will create an undue hardship on the person for whom the waiver or variance is requested; the waiver or variance of the rule on the basis of the particular circumstances relevant to that specified person would be consistent with public interest; 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 or variance is requested; and the waiver or variance of the rule in the specific case would not prejudice the substantial legal rights of any person.

41.3(2) The agency shall deny a request for waiver or variance of an administrative rule if the request waives or varies any statute in whole or part. The agency shall deny any request if it does not comply with the provisions of this rule. The agency may grant waiver or variance of a rule if it finds that application of all or a portion of the rule to the circumstances of the specified person would not, to any extent, advance or serve any purposes of the rule. The agency will deny a request unless there are exceptional circumstances justifying an exception to the general application of the rule in otherwise similar circumstances. A waiver or variance shall be denied if the material facts presented in the request are not true or material facts have been withheld. The agency may request additional information from the requesting party relative to the application and surrounding circumstances.

871—41.4(17A,ExecOrd11) Public inspection. All waiver or variance requests and responses shall be indexed by administrative rule number and available to members of the public for inspection at the administrative office of the Workforce Development Department, 1000 East Grand Avenue, Des Moines, Iowa. Identifying information concerning individuals as unemployment benefit claimants and taxpayers and other identifying information may be withheld by the agency in order to protect the confidentiality of parties as required by Iowa Code chapter 96.

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

[Filed 7/24/00, Notice 1/26/00—published 8/23/00, effective 9/27/00]