

481—6.1(10A,17A) Waivers.

6.1(1) Scope and applicability. Pursuant to Iowa Code section 17A.9A, this chapter outlines generally applicable standards and procedures for the waiver of rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department. The department may only grant a waiver from a rule if the department has jurisdiction over the rule and the waiver is consistent with applicable statutes, constitutional provisions, or other law. The department cannot waive requirements created or duties imposed by statute. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision is applicable. To the extent a division, board, or commission under the administrative authority of the department pursuant to Iowa Code chapter 10A has independent rulemaking authority but has not adopted rules governing waivers, the standards and procedures of this chapter are applicable to the division, board, or commission with rulemaking and waiver authority.

6.1(2) Definitions.

“*Department*” means the department of inspections, appeals, and licensing authorized by Iowa Code chapter 10A or, for purposes of this chapter, a division, board, or commission under the administrative authority of the department pursuant to Iowa Code chapter 10A that has rulemaking and waiver authority to whom this chapter is applicable.

“*Director*” means the director of the department, the director’s designee, or a division, board, or commission under the administrative authority of the department pursuant to Iowa Code chapter 10A that has rulemaking and waiver authority or its designee.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or association, or any legal entity.

6.1(3) Criteria for waiver. At the sole discretion of the department, an order waiving the requirements of a rule, in whole or in part, may be issued in response to a petition completed pursuant to subrules 6.1(4) and 6.1(5) if the department finds, based on clear and convincing evidence, all of the following:

- a. Application of the rule to the petitioner would pose an undue hardship on the person or class of persons for whom the waiver is requested;
- b. Waiver from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person;
- c. Provisions of a rule subject to a petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. 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 is requested.

6.1(4) Filing of petition. A petition for a waiver must be submitted in writing to the department. The submission may be sent to the department’s physical address at 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321; submitted through an applicable online portal at dial.iowa.gov; or emailed to pertinent program personnel. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.

6.1(5) Content of petition. A petition for waiver should include the following information as applicable to the request and known to the requester:

- a. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.
- b. A description and citation of the specific rule from which a waiver is requested.
- c. The specific waiver requested, including the precise scope and duration.
- d. The relevant facts that the petitioner believes would justify a waiver under each of the criteria described in subrule 6.1(3). The petitioner shall include a signed statement attesting to the accuracy of the facts and justification provided in the petition.
- e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department that would be affected by the proposed waiver, including a description of any related notices of violation, contested case hearings, or investigative reports within the last five years.

f. Any information known to the requester regarding the department's action in similar circumstances.

g. The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of a waiver.

h. The name, address, and telephone number of any person or entity that may be adversely affected by the granting of a petition.

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

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

6.1(6) *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. The department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director or the director's designee.

6.1(7) *Notice.* The department will acknowledge a petition upon receipt. Except where otherwise provided by law, a petition shall be served by the petitioner upon any party of record of a contested case proceeding and on all other persons identified in the petition for waiver as affected by the petition, simultaneously with the filing. The petitioner shall 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 that notice has been provided. In addition, the department may give notice to other persons.

6.1(8) *Ruling.* An order granting or denying a waiver shall be in writing and 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 duration of the waiver if one is issued.

a. Department discretion. The final decision on whether the circumstances justify the granting of a waiver is at the discretion of the department upon consideration of all relevant factors. Each petition for a waiver will be evaluated by the department based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the department should exercise its discretion to grant a waiver from a department rule.

c. Special waiver rules not precluded. This chapter does not preclude the department from granting waivers in other contexts or on the basis of other standards if a statute authorizes the department to do so and the department deems it appropriate to do so. The department may identify different or additional information for a petitioner to provide for specified rules.

d. Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the department will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

e. Conditions. The department may condition the granting of the waiver on such conditions as appropriate to protect the public health, safety, and welfare.

f. Narrow tailoring. A waiver, if granted, will provide the narrowest exception possible to the provisions of the rule and be applied to the circumstances of a specified person or a specific and narrowly drawn class of persons.

g. Duration. A permanent waiver should not be permitted unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver may be renewed if the department finds that all of the factors set out in subrule 6.1(3) remain valid.

h. Time for ruling. The department will grant or deny a petition for a waiver as soon as practicable but, in any event, within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department may wait until the contested case is resolved before ruling on the petition for waiver. Failure of the department to grant or deny a petition within the required time period is deemed a denial of that petition by the department.

i. Service of order. 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.

6.1(9) Reconsideration. A person who objects to a denial of a waiver may make a request for reconsideration or informal appearance before the director, or the director's designee, to request reconsideration.

6.1(10) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Within 60 days of granting or denying a waiver, the department shall also submit to the internet site maintained by the administrative code editor and administrative rules coordinator the information described in Iowa Code section 17A.9A. Petitions for a waiver and orders granting or denying a waiver petition are generally public records under Iowa Code chapter 22, although some petitions or orders may contain information the department is authorized or required to keep confidential. The department may redact confidential information from petitions or orders prior to public inspection.

6.1(11) 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 upon appropriate notice and opportunity for hearing if the department finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means for ensuring that the public health, safety, and welfare would be adequately protected after issuance of the waiver order have been insufficient, or the requester has failed to comply with the conditions of the order.

6.1(12) Violations. Violation of a condition in 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.

6.1(13) Defense. After the department issues an order granting a waiver, the order is a defense within its 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.

6.1(14) Judicial review. To the extent judicial review of the department's decision to grant or deny a waiver petition is available, the procedures set forth in Iowa Code chapter 17A are applicable.

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