

**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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