

CHAPTER 10  
WAIVERS FROM ADMINISTRATIVE RULES

**561—10.1(17A,455A) Criteria for waiver.** Upon petition of any person and at the sole discretion of the department, the department may issue a waiver from the requirements of a rule if the director or the director's designee or the department in a contested case proceeding finds, based on clear and convincing evidence, all of the factors as set forth in Iowa Code section 17A.9A(2).

**561—10.2(17A,455A) Burden of persuasion.** The burden of persuasion rests with the person who petitions the department for the waiver of a rule consistent with Iowa Code section 17A.9A(3).

**561—10.3(17A,455A) Special waiver rules not precluded.** This chapter shall not preclude the department from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so, and the director deems it appropriate to do so.

**561—10.4(17A,455A) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons governed by the particular rule.

**561—10.5(17A,455A) Filing of petition.** A petition for a waiver shall be submitted in writing to the department as follows:

**10.5(1) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding. The department may elect not to rule on the waiver petition until the resolution of the contested case proceeding.

**10.5(2) Other.** If the petition does not relate to a pending contested case, the petition may be submitted to the director.

**561—10.6(17A,455A) Contents of petition.** A petition for waiver shall include the following information when applicable and known to the petitioner:

**10.6(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.

**10.6(2)** A description and citation of the specific rule from which a waiver is requested.

**10.6(3)** The specific waiver requested, including the precise scope and operative period that the waiver will extend.

**10.6(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 provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

**10.6(5)** A history of any prior contacts between the department and the petitioner for the past five years, including a description of each affected permit held by the petitioner, and any notices of violation, administrative orders, contested case proceedings, and lawsuits involving the department and the petitioner.

**10.6(6)** Any information known to the petitioner regarding the department's treatment of similar cases.

**10.6(7)** The name, address, and telephone number of any public agency or political subdivision of the state or federal government which also regulates the activity in question, or which might be affected by the granting of a waiver.

**10.6(8)** The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

**10.6(9)** The name, address, and telephone number of any person with knowledge of relevant facts relating to the proposed waiver.

**10.6(10)** Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

**561—10.7(17A,455A) Additional information.** Prior to issuing a decision 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 director may, on the director's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director.

**561—10.8(17A,455A) Notice.** The petitioner, within 30 days of submission of the petition, shall serve by certified mail notice of the pending petition and a concise summary of its contents upon all persons to whom notice is required by any provision of law. The petitioner shall provide a written statement to the department attesting that the required notice has been provided. The department shall acknowledge a petition upon receipt and, in addition, the department may give notice to other persons.

**561—10.9(17A,455A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver of a rule 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.

**561—10.10(17A,455A) Ruling.** A decision 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 decision pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**561—10.11(17A,455A) Conditions.** The department may condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**561—10.12(17A,455A) 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 receipt of the petition, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**561—10.13(17A,455A) When deemed denied.** Failure of the director or the department in a contested case proceeding to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department.

**561—10.14(17A,455A) Service of decision.** Within seven days of its issuance, any decision issued under this chapter shall be transmitted to the petitioner or the person to whom the decision pertains and to any other person entitled to such notice by any provision of law.

**561—10.15(17A,455A) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1) "e," the department shall maintain a record of all decisions granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public.

**561—10.16(17A,455A) 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 if the department finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the waiver.

**561—10.17(17A,455A) Violations.** Violation of conditions of 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.

**561—10.19(17A,455A) Defense.** After the department issues a decision granting a waiver, the decision is a defense within its terms and the specific facts indicated therein for the person to whom the decision pertains in any proceeding in which the rule in question is sought to be invoked.

These rules are intended to implement Iowa Code chapters 17A, 21, 22, and 455A.