

Regulatory Analysis

Notice of Intended Action to be published: 761—Chapter 11
“Waiver of Rules”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.9A
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.9A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 13, 2025
11 to 11:30 a.m.

[Microsoft Teams](#)
Or dial: 515.817.6093
Conference ID: 505 838 066

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tracy George
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Purpose and Summary

This proposed chapter establishes a general process for granting waivers from the requirements of Department rules in accordance with Iowa Code section 17A.9A.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

• **Classes of persons that will bear the costs of the proposed rulemaking:**

All persons submitting a petition for waiver of a rule are affected by the proposed rules. However, there are no costs associated with submitting a petition.

• **Classes of persons that will benefit from the proposed rulemaking:**

Persons submitting a petition for waiver of a rule benefit from this chapter because the rules provide clarity and transparency.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

• **Quantitative description of impact:**

Proposed Chapter 11 explains the waiver process and is intended to ensure that the process is understood and transparent.

• **Qualitative description of impact:**

Proposed Chapter 11 explains the waiver process and ensures those who wish to submit a petition are aware of the process.

3. Costs to the State:

• **Implementation and enforcement costs borne by the agency or any other agency:**

There are no costs to the State to implement this proposed chapter.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

The major purpose of this chapter is to explain the process, which benefits those involved.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

There are no less costly methods or less intrusive methods for achieving the purpose of this chapter.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

The Department did not seriously consider any alternative methods.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Department feels this chapter is necessary and needs to have its own rules concerning the waiver process.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This proposed chapter has no impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
WAIVER OF RULES

761—11.1(17A) General.

11.1(1) Purpose. The purpose of this chapter is to establish a general process for granting waivers from the requirements of department rules in accordance with Iowa Code section 17A.9A.

11.1(2) Scope. This chapter does not:

a. Preclude the granting of waivers using another process if a statute or another department rule so provides. If the rule for which a waiver is sought has a specific waiver process of its own, this chapter is applicable only when it is specifically cited.

b. Apply to contested case proceedings.

c. Apply to rules that merely define the meaning of a statute or other provision of law if the department does not possess the delegated authority to bind the courts to any extent with its definition.

11.1(3) Definition.

“Director” means the director of transportation or the director’s designee.

761—11.2(17A) Petition for waiver.

11.2(1) Petitioner. Any person with a real and direct interest in the matter may petition the department for a waiver from the requirements of a rule.

11.2(2) Form of petition. A petition for a waiver from the requirements of a rule must be in writing and state clearly at the top of the petition that it is a “petition for waiver of a rule.” The petition shall contain the following information where applicable and known to the petitioner:

a. The name, address and telephone number of the petitioner, and any license, permit or case number applicable to the requested waiver.

b. A description of and citation to the specific rule from which a waiver is requested.

c. The specific waiver requested, including its scope and duration.

d. The relevant facts and reasons the petitioner believes would justify the requested waiver and address each of the following:

(1) Why applying the rule will result in an undue hardship to the petitioner.

(2) Why waiving the rule will not prejudice the substantial legal rights of any other person.

(3) Whether the provisions of the rule are specifically mandated by statute or another law other than the rule.

(4) How substantially equal protection of the public health, safety, and welfare will be afforded by means other than those prescribed by the rule.

e. A history of any prior contacts between the petitioner and the department that are related to the requested waiver.

f. Whether the petitioner is currently a party to a rulemaking, declaratory order, contested case, judicial proceeding, or any other proceeding related to the requested waiver.

g. Information regarding the department’s treatment of similar situations.

h. The name, address and telephone number of any public agency or political subdivision that also regulates the activity in question or that may be affected if the waiver were granted.

i. The name, address and telephone number of any person or entity that may be adversely affected if the waiver were granted.

j. The name, address and telephone number of any person who has knowledge of facts relevant to the requested waiver.

k. Releases authorizing persons with knowledge of relevant facts to furnish that information to the department.

l. The signature of the petitioner and the date signed.

11.2(3) Submission of petition. A petition for waiver from the requirements of a rule shall be submitted to the rules administrator either by mail to Rules Administrator, Government and Community Relations, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator’s email address listed on the department’s website at iowadot.gov/administrativerules.

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.

761—11.4(17A) Modification or cancellation of waiver. The department may, after notice and opportunity for hearing, modify or cancel a waiver granted pursuant to this chapter if the director finds any of the following:

1. A material fact upon which the waiver is based is not true or has changed.
2. The petitioner withheld or knowingly misrepresented a material fact relevant to the propriety or desirability of the waiver.
3. The petitioner has failed to comply with the conditions set forth in the decision granting the waiver.
4. The alternate means for ensuring that the public health, safety and welfare will be adequately protected after the waiver is granted are insufficient.

761—11.5(17A) Records.

11.5(1) All records relating to waivers granted or denied under this chapter are open records. However, if a record contains personal information that is confidential, only the portion of the record that is nonconfidential will be made available for public inspection.

11.5(2) The department's rules administrator will, at a minimum, retain for five years records relating to waivers granted or denied under this chapter.

These rules are intended to implement Iowa Code section 17A.9A.