

Regulatory Analysis

871 Chapter 41

REQUEST FOR WAIVER OR VARIANCE OF ADMINISTRATIVE RULE

Purpose and Summary

This administrative code provides guidance to the public on requesting waivers or variances of rules for the Department of Workforce Development.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
General Public
 - Classes of persons that will benefit from the proposed rulemaking:
General Public
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:
There is no quantitative impact.
 - Qualitative description of impact:
There is no qualitative impact.
3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
None.
 - Anticipated effect on state revenues:
None.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Not applicable.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
Not applicable.
6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
None.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Iowa Administrative Code 871.41 provides the standards by which the public may pursue waivers or variances of rules for the Department of Workforce Development.

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?

Not applicable.

Text of Proposed Rulemaking

Rescind 871 – Chapter 41 and adopt the following **new** chapter in lieu thereof:

871 - 41.1 (17A) 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 should 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 should 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 should be emailed, 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 should 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 time period that the waiver or variance will extend.
4. Relevant facts that the requester believes would justify a waiver or variance. This statement should include a signed statement from the petitioner attesting to the accuracy of the facts.
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) Procedural requirements.

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

41.2(2) The agency grants or denies a request for waiver or variance of all or a portion of a rule as soon as practical. This will be done 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 is 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) Criteria for waiver or variance.

41.3(1) The director of the Workforce Development Department decides whether circumstances justify the granting of a waiver or variance, given relevant facts. The requester assumes the burden of persuasion involving a request for waiver or variance of an administrative rule. The requester 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 will 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 should 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 will 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) 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 Iowa 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.