



State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

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EXECUTIVE ORDER NUMBER ELEVEN

- WHEREAS, agency regulatory activities have become increasingly pervasive in their impact on the lives of Iowans; and
- WHEREAS, agency rules that work well in a generality of cases, as applied across the board, may sometimes produce harsh or unintended consequences when applied in particular cases, where a set of unanticipated circumstances exist; and
- WHEREAS, special circumstances may sometimes exist that justify the exclusion of particular persons from the general application of a rule; and
- WHEREAS, fairness and public interest demand that all agency actions shall be narrowly-tailored to achieve the agency's lawful objectives; and
- WHEREAS, agencies should seek to eliminate or ameliorate, whenever possible, any unnecessary or unjustified over-breadth in their exercise of their regulatory authority as applied to individual cases; and
- WHEREAS, this administration launched a quality and efficiency in government initiative on February 8, 1999, wherein a task force was assembled to prepare and submit a series of recommendations to the Governor on the creation of a process for reviewing and streamlining existing state regulations and the rule-making process as a whole; and
- WHEREAS, the task force has been charged with the task of preparing a series of recommendations for creating a system to improve the execution of state government, thereby benefiting the people of this state, and improving the state's economy; and
- WHEREAS, the objective of this executive order is to insert a mechanism into the rule-making process that will increase the flexibility of administrative rule enforcement as applied to compelling individual cases.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws and the constitution of the State of Iowa do hereby order that:

- I. Each agency, with the authority to adopt rules, as defined in Iowa Code, section 17A.2(1),(10), shall initiate rule-making proceedings to adopt the Uniform Waiver Rule that is outlined in this order by publication in the Administrative Bulletin no later February 1, 2000
- II. Uniform Waiver Rule
 - A. Except to the extent prohibited by statute, each agency, as defined in Iowa Code, section 17A.2(1),(10), may issue an order, in response to a completed petition or on its own motion, granting a waiver of a rule adopted by said agency, in whole or in part, as applied to the circumstances of a specified person if the agency finds that:
 1. the application of the rule to the person at issue would result in hardship or injustice to that person; and
 2. the waiver of the rule on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and
 3. the waiver of the rule in the specific case would not prejudice the substantial legal rights of any person.

The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the agency head, upon consideration of all relevant factors.

- B. In response to the timely filing of a completed petition requesting a waiver, the agency shall, except to the extent prohibited by statute, grant a waiver of a rule, in whole or in part, as applied to the particular circumstances of a specified person, if the agency finds that the application of all or a portion thereof to the circumstances of that specified person would not, to any extent, advance or serve any of the purposes of the rule.
- C. The petitioner shall assume the burden of persuasion when a petition is filed for a waiver of an agency rule.
- D. The agency may create a provision identifying other generally applicable contexts, or other general standards, that it will utilize as a basis for granting discretionary or mandatory waivers of its rules for specified persons. All provisions that identify generally applicable contexts or standards must be submitted to the Governor for final approval before they are implemented by the agency.
- E. This uniform waiver rule shall not preclude the agency from granting waivers in other contexts or on the basis of other standards if the statute or other agency rules authorize it to do so, and the agency deems it appropriate to do so.

III. Procedures for Granting Waivers

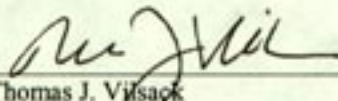
- A. Any person may file a petition with the agency requesting a waiver, in whole or in part, of an agency rule on the ground that the application of the uniform waiver rule to the particular circumstances of that person would justify for a waiver under the agency's uniform waiver rule. Each agency shall designate an individual to receive written petitions.
- B. A petition for a waiver shall include the following information where applicable and known to the requester:
 - 1. The name, address, and case number or state identification number of the person or entity for whom a waiver is being requested
 - 2. A description and citation of the specific rule to which a waiver is requested.
 - 3. The specific waiver requested, including the precise scope and operative period that the waiver will extend.
 - 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.
 - 5. A history of the agency's action relative to the petitioner.
 - 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 of state government who would be adversely affected by the grant of the petition, or otherwise possesses knowledge of the matter with respect to the waiver request.
 - 8. Signed releases of information authorizing persons with knowledge regarding the request to furnish the agency with information pertaining to the waiver.

Each agency may include, here, other provisions, consistent with this executive order, that govern the form, filing, timing, and contents of petitions for the waivers of rules, and the procedural rights of persons in relation to such petitions.

- C. Agencies shall acknowledge a petition upon receipt. Each agency shall ensure that notice of the pendency of a petition, and a concise summary of its contents, have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the provision. In addition, the agency may give notice to other persons. To accomplish this notice provision, each agency may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the agency attesting that notice has been provided.
- D. The provisions of Iowa Code section 17A.10-.18A apply to agency proceedings for a waiver of a rule only to the extent an agency so provides by rule or order or is required to do so by statute. Prior to issuing an order granting or denying a waiver petition, the agency may request additional information from the petitioner relative to the application and surrounding circumstances.

- E. An order 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 order pertains, a statement of the relevant facts and reasons upon which that action is based, and a description of the precise scope and operative period of the waiver if one is issued. The agency shall grant or deny a petition for the waiver of all or a portion of a rule as soon as practicable, but at any event, shall do so within 120 days of its receipt, unless petitioner agrees to a later date. However, if a waiver petition has been filed in a contested case proceeding, the agency shall grant or deny the petition 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 petition within the required time period shall be deemed a denial of that petition by the agency.
- F. Within seven (7) days of its issuance, any order issued under the Uniform Waiver Rule 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.
- G. Subject to the provisions of Iowa Code section 17A.3(1)(c), each agency shall maintain a record of all orders granting and denying waivers under the uniform rule. The records shall be indexed by rule and available for public inspection.
- H. This executive order shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the agency does not possess delegated authority to bind the courts to any extent with its definition and does not authorize an agency to waive any requirement created or duty imposed by statute.
- I. After the agency 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.

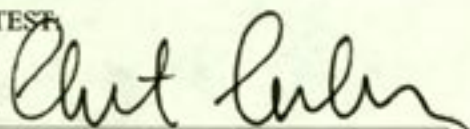
IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 14th day of September in the year of our Lord one thousand nine hundred and ninety-nine.



Thomas J. Vilsack
Governor



ATTEST



Chester J. Culver
Secretary of State