

**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**

**Notice of Intended Action**

**Proposing rule making related to waivers and providing an opportunity for public comment**

The Iowa Department of Veterans Affairs hereby proposes to amend Chapter 4, “Agency Procedure for Rule Making,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 35A.5(12).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 17A.9A and 2020 Iowa Acts, House File 2389.

*Purpose and Summary*

The proposed amendment updates rule 801—4.14(17A,35D) in accordance with changes to Iowa Code section 17A.9A as required by 2020 Iowa Acts, House File 2389, section 10. The legislation called for the deletion of the word “variance” when the word is used in relation to “waiver.”

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 22, 2021. Comments should be directed to:

Melissa Miller  
Iowa Department of Veterans Affairs  
Camp Dodge, Bldg. #3465  
7105 NW 70th Avenue  
Johnston, Iowa 50131  
Email: [melissa.miller2@iowa.gov](mailto:melissa.miller2@iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 801—4.14(17A,35D) as follows:

**801—4.14(17A,35D) Uniform waiver rule.**

**4.14(1)** To the extent a waiver ~~or variance~~ is consistent with applicable statute, constitutional provision, or other provision of law, the commission of veterans affairs may issue an order, in response to the timely filing of a completed petition or on its own motion, granting a waiver ~~or variance~~, in whole or in part, from the requirements of a rule under the jurisdiction of said commission, as applied to the circumstances of a specified person, if the commission finds clear and convincing evidence of all of the following:

- a. The application of the rule to the person at issue would result in undue hardship to that person; and
- b. The provisions of a rule subject to a petition for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law; and
- c. The waiver of the rule in the specific case would not prejudice the substantial legal rights of any person; and
- d. Substantially equal protection of public health, safety and welfare will be afforded by a means other than that prescribed in the rule for which the waiver ~~or variance~~ is requested.

The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the chairperson of the commission of veterans affairs based on the unique, individual circumstances set out in the petition and upon consideration of all relevant factors.

**4.14(2)** A waiver ~~or variance~~, if granted, shall be drafted by the commission so as to provide the narrowest exception possible to the provisions of the rule. The commission may place any condition on a waiver ~~or variance~~ that the commission finds desirable to protect the public health, safety and welfare. A waiver ~~or variance~~ shall not be permanent, unless the petitioner can show that a temporary waiver ~~or variance~~ would be impracticable. If a temporary waiver ~~or variance~~ is granted, there is no automatic right to renewal. At the sole discretion of the agency, a waiver ~~or variance~~ may be renewed if the agency finds that all of the factors set out in subrule 4.14(1) remain valid.

**4.14(3)** The burden of persuasion rests with the person who petitions the commission for the waiver ~~or variance~~ of a rule.

**4.14(4)** This uniform waiver rule shall not preclude the commission from granting waivers ~~or variances~~ in other contexts or on the basis of other standards if the statute or other rules authorize it to do so and the commission deems it appropriate to do so.