Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 282—Chapter 6
"Waivers From Administrative Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.146 and 17A

State or federal law(s) implemented by the rulemaking: Iowa Code section 256.146 and chapter 17A

Public Hearing

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

September 11, 2024 9 a.m.	Board Room, Suite A 701 East Court Avenue Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Board of Educational Examiners no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Board of Educational Examiners
701 East Court Avenue, Suite A
Des Moines, Iowa 50309
Phone: 515.242.6506
Email: beth.myers@iowa.gov

Purpose and Summary

This proposed chapter provides procedures for waivers. The Board is proposing to remove duplicative statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The Board bears the cost of compliance.

- Classes of persons that will benefit from the proposed rulemaking:

Iowans in general will benefit from the proposed rulemaking.

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:

The Board discerns no quantitative impact.

- Qualitative description of impact:

The Board discerns no qualitative impact.

3. Costs to the State:

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

There are no known costs.

- Anticipated effect on state revenues:

There is no effect on state revenues.

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

The proposed chapter is streamlined and reduces duplicative language.

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

There are no known costs or effects on state revenue.

6. Alternative methods considered by the agency:

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

The Board considered removing the chapter.

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

The public benefits from having information about the process for waivers.

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?

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 282—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
WAIVERS FROM ADMINISTRATIVE RULES

282—6.1(17A) Definitions. For purposes of this chapter:

"Board" means the board of educational examiners.

"Waiver" means the same as defined in Iowa Code section 17A.9A(5).

282—6.2(17A) General. The board may grant a waiver of any administrative rule if the waiver is consistent with Iowa Code section 17A.9A.

282—6.3(17A) Criteria for waiver. In response to a petition filed pursuant to this chapter, the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, that all of the factors listed in Iowa Code section 17A.9A(2) apply.

282—6.4(17A) Filing of petition. A petition for a waiver will be submitted to the board as follows:

6.4(1) *License, certificate, or authorization application.* If the petition relates to an application, the petition will be made in accordance with the filing requirements for the application in question.

6.4(2) *Contested cases.* If the petition relates to a pending contested case, the petition will be filed in the contested case proceeding using the caption of the contested case.

6.4(3) *Other.* If the petition does not relate to a license, certificate, or authorization application or a pending contested case, the petition may be submitted to the board's executive director.

282—6.5(17A) Content of petition. A petition for waiver will include the following information where applicable and known to the requester:

6.5(1) The name, address, and telephone number of the person or entity for whom a waiver is being requested, and the case number of any related contested case.

6.5(2) A description and citation of the specific rule from which a waiver is requested.

6.5(3) The specific waiver requested, including the precise scope and duration.

6.5(4) The relevant facts that the petitioner believes would justify a waiver under the criteria described in Iowa Code section 17A.9A(2). This statement is to 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.

6.5(5) A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, or authorization affected by the proposed waiver, including a description of each affected license or authorization held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6.5(6) Any information known to the requester regarding the board's treatment of similar cases.

6.5(7) The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the grant of a waiver.

6.5(8) The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.

6.5(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

6.5(10) Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

282—6.6(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board 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 board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

282—6.7(17A) Notice. The board will acknowledge a petition upon receipt and ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is necessary by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board 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 board attesting that notice has been provided.

282—6.8(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply in three situations:

6.8(1) To any petition for a waiver filed within a contested case,

6.8(2) When provided by rule or order, or

6.8(3) When required to do so by statute.

282—6.9(17A) Ruling. An order granting or denying a waiver will be in writing and will 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 the action is based, and a description of the precise scope and operative period of any waiver issued.

6.9(1) *General.* The final decision on whether the circumstances justify the granting of a waiver is in the sole discretion of the board, based on the unique, individual circumstances set out in the petition.

6.9(2) *Compliance with Iowa Code standards.* The board applies the standards and burdens in Iowa Code section 17A.9A(3).

6.9(3) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

6.9(4) *Time for ruling.* The board will grant or deny a petition for a waiver as soon as practicable but, in any event, within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board will grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the board to grant or deny a petition within the required time period is deemed a denial of that petition by the board. However, the board remains responsible for issuing an order denying a waiver.

6.9(5) *Service of order.* Within seven days of its issuance, any order issued under this chapter is to 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.

282—6.10(17A) Public availability. The board will comply with the public availability and filing procedures of Iowa Code section 17A.9A(4).

282—6.11(17A) After issuance of a waiver.

6.11(1) *Cancellation.* A waiver issued pursuant to this chapter may be withdrawn, canceled or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

6.11(2) *Violations.* A violation of conditions in the waiver approval is the equivalent of a violation of the particular rule for which the waiver is granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

6.11(3) *Defense.* After the board 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.

6.11(4) *Judicial review.* Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapter 17A.