Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 81
"Boiler and Pressure Vessel Board Waivers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 89.14
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

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

October 22, 2024 8:30 to 9 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 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 Labor Services Division no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

This proposed rulemaking rescinds Chapter 81 in accordance with the goals and directives of Executive Order 10 and adopts a new Chapter 81. Proposed Chapter 81 sets forth procedures for the Boiler and Pressure Vessel Board to grant waivers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Boiler and Pressure Vessel Board runs at minimal cost to anyone.

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

The public benefits from safe boilers and pressure vessels. Boiler and pressure vessel owners benefit from being able to obtain waivers when warranted.

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 frequently hears waiver requests.

- Qualitative description of impact:

No qualitative impact is discerned.

3. Costs to the State:

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

The Board is a small cost for the agency.

- 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:

Inaction would result in less expertise and longer waits for hearing waivers.

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

No less costly or less intrusive methods are known.

6. Alternative methods considered by the agency:

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

No alternative methods were seriously considered.

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

Not applicable.

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?

Waivers have no negative impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 875—Chapter 81 and adopt the following **new** chapter in lieu thereof:

CHAPTER 81
BOILER AND PRESSURE VESSEL BOARD WAIVERS

875—81.1(17A,89) Criteria for waiver. In response to a petition completed 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 as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

81.1(1) The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

81.1(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

81.1(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

81.1(4) 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 is requested.

875—81.2(17A,89) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

81.2(1) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding using the caption of the contested case.

81.2(2) *Other.* If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

81.2(3) *Filing petition.* A petition is deemed filed when it is received in the board's office. A petition and related materials for consideration should be sent to the Boiler and Pressure Vessel Board, Department of Inspections, Appeals, and Licensing, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

875—81.3(17A,89) Content of petition. The required form for a petition for waiver is available on the department's website. A petition for waiver shall include the following information where applicable and known to the petitioner:

81.3(1) The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

81.3(2) A description of and citation referencing the specific rule from which a waiver is requested.

81.3(3) The specific waiver requested, including the precise scope and duration.

81.3(4) The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 875—81.1(17A,89). 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.

81.3(5) A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the boiler or pressure vessel affected by the proposed waiver.

81.3(6) The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.

81.3(7) The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

81.3(8) The state boiler identification number of the relevant object.

875—81.4(17A,89) Notice. The board will acknowledge a petition within 10 days of its receipt in the board office and ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. 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 to provide a written statement to the board attesting that notice has been provided.

875—81.5(17A,89) Board review procedures.

81.5(1) Unless the board makes other arrangements, petitions for waiver will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the following meeting.

81.5(2) The petitioner will be provided a reasonable opportunity to make a presentation to the board.

875—81.6(17A,89) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a contested case but otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

875—81.7(17A,89) Ruling. An order granting or denying a waiver will be in writing and contain a reference to the particular person or legal entity 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 duration of the waiver if one is issued.

81.7(1) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

81.7(2) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

81.7(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.

81.7(4) *Conditions.* The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

81.7(5) *Time period of waiver.* A waiver will not be permanent unless the petitioner can show that a temporary waiver would be impracticable. A waiver may be renewed if the board finds that grounds for a waiver continue to exist.

81.7(6) *Time for ruling.* The board will grant or deny a petition for a waiver as soon as practical 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 shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

81.7(7) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period will be deemed a denial of that petition by the board.

81.7(8) *Service of order.* Within 14 days of the ruling, any order issued under this rule will be transmitted or delivered 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.

81.7(9) *Posting of orders granting waivers.* The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the room where the object is installed.

875—81.8(17A,89) Public availability. All orders granting or denying a waiver petition will be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3.

875—81.9(17A,89) Submission of waiver information. Information about all orders granting or denying a waiver petition will be submitted by the board staff to the legislative services agency through the designated Internet site within 60 days of granting or denying the petition. The information submitted is available to the public via the department's website.

875—81.10(17A,89) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

81.10(1) 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

81.10(2) The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

81.10(3) The subject of the waiver order has failed to comply with all conditions contained in the order.

875—81.11(17A,89) Violations. Violation of a condition in a waiver order is a violation of the particular rule for which the waiver was granted. The recipient of a waiver under this rule 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.

875—81.12(17A,89) 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 chapters 17A, 22, and 89.