Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 199
"Waivers from Administrative Rules"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.106A and 17A.9A
State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.9A

Public Hearing

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

October 22, 2024	1963 Bell Avenue
9:45 to 10 a.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Economic Development Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind 261—Chapter 199 and adopt a new chapter in lieu thereof. The new chapter eliminates language that is duplicative of statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated and unclear language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Persons requesting a waiver of administrative rules will bear the costs of the proposed rulemaking.

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

Persons requesting a waiver of administrative rules may benefit from the improved clarity of the chapter.

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:

Petitioners requesting a waiver of administrative rules may incur costs to draft the petition for a waiver. The amount of the costs will vary depending on the complexity of the issues and the compensation of staff or service providers who draft the waiver.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the Authority's processes for consideration of waiver requests.

3. Costs to the State:

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

The Authority incurs staff time to implement the waiver process, including time to review petitions for waiver. If the petition for waiver is filed within a contested case hearing, staff time is required to hold a hearing in accordance with contested case hearing procedures.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

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

The proposed rulemaking does not impose any additional costs on petitioners requesting waiver of an administrative rule compared to the existing Chapter 199. There is minimal change to the costs and benefits.

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

The Authority has not identified any less costly methods or less intrusive methods that exist for addressing petitions for waivers.

6. Alternative methods considered by the agency:

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

The Authority did not consider any alternative methods.

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

The Authority did not consider any alternative methods because the Authority did not identify a less costly or less intrusive method.

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?

The proposed rules do not have a substantial impact on small business. The rules do not establish compliance or reporting requirements. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 199 and adopt the following **new** chapter in lieu thereof:

CHAPTER 199
WAIVERS FROM ADMINISTRATIVE RULES

261—199.1(17A,15) Definitions.

"Authority" means the Iowa economic development authority created in Iowa Code section 15.105.

"Director" means the same as defined in Iowa Code section 15.102(8).

"Person" means the same as defined in Iowa Code section 17A.2(9).

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

261—199.2(17A,15) Applicability of chapter. The authority may grant a waiver of a rule as permitted by Iowa Code section 17A.9A.

261—199.3(17A,15) Criteria for waiver. In response to a petition filed pursuant to this chapter, the authority may grant a waiver if the authority finds, based on clear and convincing evidence, all of the factors listed in Iowa Code section 17A.9A(2).

261—199.4(17A,15) Filing of petition. Petitions for waiver should be submitted in writing to the Director, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315. If the petition relates to a pending contested case, the petition is filed in the contested case proceeding, using the caption of the contested case. Petitions may be delivered by email to an email address supplied by the authority's legal counsel.

261—199.5(17A,15) Content of petition. A completed petition for waiver includes the following information where applicable and known to the petitioner:

199.5(1) The name, address, and telephone number of the person for whom a waiver is being requested and the case number of any related contested case.

199.5(2) A description and citation of the specific rule from which a waiver is requested.

199.5(3) The specific waiver requested, including the precise scope and duration.

199.5(4) The relevant facts that the petitioner believes would justify a waiver under criteria described in Iowa Code section 17A.9A(2). 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.

199.5(5) A history of any prior contacts between the authority and the petitioner relating to the regulated activity, license, financial assistance, or incentives affected by the proposed waiver, including a description of each affected license 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.

199.5(6) Any information known to the petitioner regarding the authority's treatment of similar cases.

199.5(7) The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.

199.5(8) The name, address, and telephone number of any person who would be adversely affected by the granting of a waiver.

199.5(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

199.5(10) Signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver.

261—199.6(17A,15) Notice. The authority will acknowledge a petition within five business days of its receipt. Within 30 days of the receipt of the petition, the authority will provide notice of the pendency of the petition and a copy of the petition or a concise summary of the petition to all persons to whom notice is required by any provision of law. In addition, the authority may give notice to other persons. To accomplish this provision, the authority 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 authority attesting that notice has been provided.

261—199.7(17A,15) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply to the following:

199.7(1) When any petition for a waiver is filed within a contested case;

199.7(2) When the authority so provides by rule or order; or

199.7(3) When required to do so by statute.

261—199.8(17A,15) Authority responsibilities regarding petition for waiver.

199.8(1) *Additional information.* Prior to issuing an order granting or denying a waiver, the authority may request additional information from the petitioner relative to the petition and surrounding circumstances. The authority may schedule a meeting between the petitioner and the authority or, if the petition was filed in a contested case, between the petitioner and all parties to the contested case.

199.8(2) *Compliance with Iowa Code standards.* The authority applies the standards and burdens in Iowa Code section 17A.9A(3).

199.8(3) *Final discretion.* The final decision on whether the circumstances justify the granting of a waiver is in the sole discretion of the authority.

199.8(4) *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 duration of the waiver if one is granted.

199.8(5) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the authority will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

199.8(6) *Time for ruling.* The authority will grant or deny a petition for a waiver as soon as practicable but, in any event, will do so within 90 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a pending contested case, the authority will grant or deny the petition no later than the time at which the final decision in that matter is issued. Failure of the authority to grant or deny a petition within the required time period is deemed a denial of that petition by the authority. However, the authority remains responsible for issuing an order denying a waiver.

199.8(7) *Service of order.* Within seven days of its issuance, the authority will transmit an order issued under this chapter to the petitioner or any other person entitled to such notice.

261—199.9(17A,15) Public availability. The authority will comply with the public availability and filing procedures of Iowa Code section 17A.9A(4).

261—199.10(17A,15) After issuance of a waiver.

199.10(1) *Voiding or cancellation.* A waiver is void if the material facts upon which the petition is based are not true or if material facts have been withheld. The authority may withdraw, cancel or modify a waiver if, after appropriate notice and hearing, the authority issues an order finding any of the following: facts as stated in the request are not true; material facts have been withheld; the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute or substantially equal protection of public health, safety, and welfare; or the requester has failed to comply with the conditions of the order.

199.10(2) *Violations.* Violation of a condition in a waiver order is the equivalent of a violation of the particular rule for which the waiver is granted. 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.

199.10(3) *Defense.* After the authority 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.

199.10(4) *Judicial review.* Judicial review of the authority's decision to grant or deny a waiver petition may be undertaken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 15.