

VETERINARY MEDICINE BOARD[811]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 14
“Waiver of Rules”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

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

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
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 Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

The proposed chapter provides the public with information about how to petition the Board for a waiver and provides an opportunity for the public to seek a waiver of a rule in certain circumstances where the rule may impose a hardship.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Only citizens or groups that seek to prepare and file a petition for waiver would bear any costs under this rulemaking, but the rulemaking itself may provide the requestor with relief, whether in cost, time, or resources, by waiver from a potential hardship under different Board rules.

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

The public and regulated community will benefit from the proposed rulemaking because it provides a specific process by which they can seek a waiver from the Board to prevent a potential hardship.

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:

There is little, if any, quantitative or qualitative impact from this proposed rulemaking because only citizens or groups that seek to prepare and file a petition for waiver would bear any costs under the rulemaking, and those costs would be limited to the time and resources necessary to draft a petition. In addition, the rulemaking itself provides an opportunity for persons to avoid a potential hardship that could impose additional costs or burdens on the requestor.

- Qualitative description of impact:

See prior answer.

3. Costs to the State:

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

The costs would be limited to time spent by the Board and staff reviewing petition(s) for waiver, which are relatively minimal because there have been one to three petitions for waiver on average each year for the last several years.

- Anticipated effect on state revenues:

See prior answer.

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

Failure to have a specific process for petitioning for waiver could lead to increased costs or burdens to the Board and State as more staff time will be required to answer questions from the public and regulated community about how to petition the Board for waiver, which may also increase the costs or time required by the public or licensees to properly prepare a petition for declaratory orders. In addition, failure to have a process for seeking a waiver from the Board may result in a regulatory hardship being imposed on a person that could be avoided through the waiver process.

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

There does not appear to be any less costly method because the process for petitioning the Board for a waiver needs to be included in Chapter 14 to properly inform the public and regulated community about the process.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

No alternative methods were considered for the reasons previously stated.

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?

Only citizens or groups that seek to prepare and file a petition for waiver would bear any costs under this rulemaking, and there does not appear to be any additional impacts on small businesses to prepare a petition. In addition, to the extent the Board's rules impose a specific burden on a small business, the rulemaking itself provides for an opportunity for the small business to seek a waiver of the regulatory requirement in order to potentially avoid the burden.

Text of Proposed Rulemaking

- ITEM 1. Rescind 811—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14 WAIVER OF RULES

811—14.1(17A,169) Definition. For purposes of this chapter, “waiver” means action by the board that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

811—14.2(17A,169) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law

provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision supersedes this chapter with respect to any waiver from that rule.

811—14.3(17A,169) Applicability. The board may grant a waiver from a rule only if the board is authorized to do so by Iowa Code section 17A.9A(1).

811—14.4(17A,169) Criteria for waiver. In response to a petition completed pursuant to rule 811—14.6(17A,169), the board may issue an order waiving in whole or in part the requirements of a rule in accordance with Iowa Code section 17A.9A(2) “a” through “d.”

811—14.5(17A,169) Filing of petition. A petition for a waiver will only be considered by the board if it is submitted in writing to the board as follows:

14.5(1) Credential application. If the petition relates to a credential application, the petition is made in accordance with the filing requirements for the credential in question.

14.5(2) Contested cases. 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.

14.5(3) Other. If the petition does not relate to a credential application or a pending contested case, the petition is submitted to the board’s secretary.

811—14.6(17A,169) Content of petition. A petition for waiver will only be considered by the board if it includes the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 811—14.4(17A,169), 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 any prior contacts between the board and the petitioner relating to the regulated activity or credential affected by the proposed waiver, including a description of each affected credential held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or credential within the last five years.
6. Any information known to the requester regarding the board’s treatment of similar cases.
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 granting of a waiver.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

811—14.7(17A,169) 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 secretary, a committee of the board, or a quorum of the board.

811—14.8(17A,169) Notice. The board will acknowledge a petition upon receipt. The board will 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 required 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 necessary by any provision of law and provide a written statement to the board attesting that notice has been provided.

811—14.9(17A,169) 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 and otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is mandated to do so by statute.

811—14.10(17A,169) Ruling. An order granting or denying a waiver will be in writing and 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 issued.

14.10(1) 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.

14.10(2) When deemed denied. Failure of the board to grant or deny a petition within the applicable time period is deemed a denial of that petition by the board. However, the board remains responsible for issuing an order denying a waiver.

14.10(3) Service of order. Within seven days of its issuance, any order issued under this chapter will 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.

811—14.11(17A,169) 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. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or needs to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

811—14.12(17A,169) Submission of waiver information. Within 60 days of granting or denying a waiver, the board will make a submission on the Internet site established pursuant to Iowa Code section 17A.9A(4) for the submission of waiver information.

811—14.13(17A,169) 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 hearing, the board issues an order finding any of the following:

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

811—14.14(17A,169) Violations. Violation of a condition in a waiver order is treated as a violation of the particular rule for which the waiver was 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.

811—14.15(17A,169) 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.

811—14.16(17A,169) Judicial review. Judicial review of a 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 section 17A.9A and chapter 169.