

CHAPTER 15 WAIVERS

[Prior to 4/5/23, see 201—Chapter 16]

205—15.1(17A) 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.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.2(17A) Scope. 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 shall supersede this chapter with respect to any waiver from that rule.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.3(17A) Applicability. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.4(17A) Criteria for waiver. The criteria for granting a waiver are set out in Iowa Code section 17A.9A and are incorporated herein.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

15.5(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.

15.5(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted to the board’s chairperson.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.6(17A) Content of petition. A petition for waiver includes the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is 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 Iowa Code section 17A.9A. This statement will 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.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity affected by the proposed waiver, including a description of any notices of violation, contested case hearings, or investigative reports relating to the regulated activity within the past 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.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.7(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, electronic, or in-person meeting between the petitioner and the board's chairperson, a committee of the board, or a quorum of the board.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.8(17A) Notice. The board will acknowledge a petition upon receipt. The board ensures 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 required by any provision of law and provide a written statement to the board attesting that notice has been provided.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.9(17A) 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 also apply to board proceedings for a waiver when the board so provides by rule or order or is required to do so by statute.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.10(17A) 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.

15.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver will be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver is evaluated by the board based on the unique, individual circumstances set out in the petition.

15.10(2) 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 board rule.

15.10(3) Narrowly tailored exception. A waiver, if granted, will provide the narrowest exception possible to the provisions of a rule.

15.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board balances the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

15.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

15.10(6) Time period of waiver. A waiver is not permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

15.10(7) Time for ruling. The board may grant or deny a petition for a waiver as soon as practicable but, in any event, will do so 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.

15.10(8) 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. However, the board remains responsible for issuing an order denying a waiver.

15.10(9) 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.

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205—15.11(17A) Public availability. All orders granting or denying a waiver petition are indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

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205—15.12(17A) 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 for the submission of waiver information. The submission will identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the authority's actions on waiver requests. If practicable, the report will also detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.13(17A) 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; or
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.

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205—15.14(17A) 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.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.15(17A) 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.

[ARC 8447C, IAB 12/11/24, effective 1/15/25]

205—15.16(17A) 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.

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

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