

CHAPTER 14
WAIVER OF RULES

Chapter rescission date pursuant to Iowa Code section 17A.7: 7/1/29

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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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).

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.”

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

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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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

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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.

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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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

[ARC 8023C, IAB 5/15/24, effective 7/1/24]

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.

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These rules are intended to implement Iowa Code section 17A.9A and chapter 169.

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