

Red Tape Review Rule Report (Due: September 1, 2024)

Department Name:	IFA	Date:	2/5/2024	Total Rule Count:	16
IAC #:	265	Chapter/ SubChapter/ Rule(s):	Chapter #18	Iowa Code Section Authorizing Rule:	17A.9A and 16.5
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PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

To describe the authority’s procedures for waiving its administrative rules.

Is the benefit being achieved? Please provide evidence.

Yes, the authority is able to comply with relevant requirements for waiving administrative rules pursuant to Iowa Code section 17A.9A.

What are the costs incurred by the public to comply with the rule?

Members of the public who want to request a waiver from an administrative rule may incur costs to draft and submit a petition for waiver and to respond to any requests by the authority for additional information.

What are the costs to the agency or any other agency to implement/enforce the rule?

Authority staff time is required to review petitions for waiver of administrative rule, to seek additional information if needed, and to draft an order granting or denying a waiver.

Do the costs justify the benefits achieved? Please explain.

No additional costs are imposed by the rules chapter beyond the authority’s statutory obligations described in Iowa Code section 17A.9A.

Are there less restrictive alternatives to accomplish the benefit? YES NO

If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.

No less restrictive alternatives were identified.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

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Yes, this chapter contains language that duplicates statutory language, is obsolete and outdated, as further described below.

18.1 Definitions: Duplicates statutory language and the term “executive director” is obsolete.

18.2 Scope: Contains unnecessary language.

18.3 Applicability of chapter: Duplicates statutory language.

18.4 Criteria for waiver: Duplicates statutory language.

18.5 Filing of petition: Contains outdated language and unnecessary words.

18.6 Content of petition: Contains unnecessary restrictive terms and inconsistent language.

18.7 Additional information: propose rescinding this rule and moving the text from this rule to a new subrule in 18.8 (after re-numbering) to improve organization and clarity for the reader.

18.8 Notice: Contains unnecessary restrictive terms and outdated language.

18.9 Hearing procedures: Contains unnecessary restrictive terms and unnecessary words.

18.10 Ruling: Contains unnecessary restrictive terms, generally unnecessary language, and duplicates statutory language. IFA proposes re-organizing this rule to improve the organization and clarity for the reader.

18.11 Public availability: Duplicates statutory language.

18.12 Submission of waiver information: Duplicates statutory language, redundant.

18.13 Voiding or cancellation, 18.14 Violations, 18.15 Defense and 18.16 Judicial review: IFA proposes rescinding these rules and moving the text to newly re-numbered rule 18.10. The proposed rule 18.10 will have 4 subrules to incorporate the text of the rescinded rules and to improve organization and clarity for the reader. IFA proposes rewriting the text of 18.13 (new subrule 18.10(1)) to remove outdated references.

RULES PROPOSED FOR REPEAL (list rule number[s]):

IFA proposes rescinding the rules below for the reasons stated above. Some rules, although effectively rescinded, will be added to other rules to better organize the chapter for the reader.

18.2

18.7

18.12

18.13

18.14

18.15

18.16

RULES PROPOSED FOR RE-PROMULGATION (list rule number[s] or include rule text if available):

CHAPTER 18
WAIVERS FROM ADMINISTRATIVE RULES

265—18.1(17A,16) Definitions.

“*Authority*” means the Iowa finance authority created in Iowa Code section 16.1A.

“*Director*” means the same as in Iowa Code section 16.1.

“*Person*” means the same as in Iowa Code section 17A.2.

“*Waiver*” means the same as Iowa Code section 17A.9A(5).

265—18.2(17A,16) Applicability of chapter. The authority may grant a waiver of a rule as permitted by Iowa Code section 17A.9A.

265—18.3(17A,16) 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).

265—18.4(17A,16) Filing of petition. Petitions for waiver should be submitted in writing to the Director, Iowa Finance 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.

265—18.5(17A,16) Content of petition. A completed petition for waiver includes the following information where applicable and known to the petitioner:

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.
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 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.
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.
6. Any information known to the petitioner regarding the authority’s treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.
8. The name, address, and telephone number of any person who would be adversely affected by the granting of a waiver.
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 authority with information relevant to the waiver.

265—18.6(17A,16) 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 notice 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.

265—18.7(17A,16) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply to the following: (a) to any petition for a waiver filed within a contested case, (b) when the authority so provides by rule or order, or (c) when required to do so by statute.

265—18.8(17A,16) Authority responsibilities regarding petition for waiver.

18.8(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.

18.8(2) Compliance with Iowa Code standards. The authority applies the standards and burdens in Iowa Code section 17A.9A(3).

18.8(3) Final discretion. The final decision on whether the circumstances justify the granting of a waiver is in the sole discretion of the authority.

18.8(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.

18.8(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.

18.8(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.

18.8(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.

265—18.9(17A,16) Public availability. The authority will comply with the public availability and filing procedures of Iowa Code section 17A.9A(4).

265—18.10(17A,16) After issuance of a waiver.

18.10(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: that the 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.

18.10(2) Violations. Violation of a condition in a waiver order is the equivalent of 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.

18.10(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.

18.10(4) Judicial review. Judicial review of the authority'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 16.

****For rules being re-promulgated with changes, you may attach a document with suggested changes.***

METRICS

Total number of rules repealed:	6
Proposed word count reduction after repeal and/or re-promulgation	1581
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	42

ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?

No.