

CHAPTER 1
DESCRIPTION OF ORGANIZATION AND
PROCEDURES BEFORE THE DIVISION

[Prior to 9/24/86, Labor, Bureau of[530]]
[Prior to 12/2/98, see 347—Ch 1]

DIVISION I
ADMINISTRATION

875—1.1(91) Definitions. The definitions of terms in Iowa Code section 17A.2 shall apply to these terms as they are used throughout this chapter. In addition, as used in this chapter:

“*Commissioner*” means the labor commissioner of the division of labor services or designee.

“*Division*” means the division of labor services of the department of workforce development.

875—1.2(91) Scope and application. This chapter describes the organization of the division, the laws it enforces, and the methods by which and location where the public may obtain information or make submissions or requests.

875—1.3(91) Department of workforce development, division of labor services. The division is the office of the commissioner and consists of the commissioner and those employees who discharge the duties and responsibilities imposed upon the commissioner by the laws of this state. The commissioner has control, supervision and authority to enforce the following chapters and sections of the Iowa Code: section 30.7, Iowa Emergency Response Commission, Duties to be Allocated to Department of Workforce Development; section 85.68, Workers’ Compensation Division, Actions—Collection of Payments—Subrogation; chapter 88, Occupational Safety and Health; chapter 88A, Safety Inspection of Amusement Rides; chapter 88B, Removal and Encapsulation of Asbestos; chapter 89, Boilers and Unfired Steam Pressure Vessels; chapter 89A, State Elevator Code; chapter 89B, Hazardous Chemicals Risks—Right to Know; chapter 90A, Boxing and Wrestling; chapter 91, Division of Labor Services; chapter 91A, Wage Payment Collection; chapter 91C, Registration of Construction Contractors; chapter 91D, Minimum Wage; chapter 91E, Non-English Speaking Employees; chapter 92, Child Labor; chapter 94, State Free Employment Service and Employment Agencies; and chapter 95, License for Employment Agencies. The division consists of four bureaus: Occupational Safety and Health Enforcement Bureau (enforces occupational safety and health rules in workplaces through inspections based on accidents, complaints, and programmed inspections); Occupational Safety and Health Consultation and Education Bureau (conducts occupational safety and health inspections at the request of an employer and conducts educational programming); Inspections and Reporting Bureau (conducts amusement ride, elevator and boiler inspection and maintains statistical information on the worker’s illnesses and injuries and the division’s inspection activities); and Employee Protection Bureau (responsible for child labor, wage payment and collection, minimum wage, employment agency licensing, workplace standards, asbestos removal and encapsulation contractor permits and licensing of professions engaged in removal and encapsulation, community and emergency response right to know, EPCRA, out-of-state construction contractor bonding, construction contractor registration, non-English speaking employee’s rights, and death assessment collection). The licensing and supervision of professional boxing and wrestling are the responsibility of the commissioner. Information may be obtained and submissions or requests may be made by contacting the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The telephone number is (515)281-3606. All correspondence and payment of fees and costs relating to the division shall be submitted directly to the division.

875—1.4 to 1.10 Reserved.

DIVISION II
OPEN RECORDS AND FAIR INFORMATION PRACTICES

875—1.11(22,91) General provisions.

1.11(1) *Statement of policy.* These rules are intended to implement Iowa Code chapter 22. Division staff shall cooperate with members of the public and other agencies in implementing the provisions of these rules.

1.11(2) *Scope of rules.* Rules 875—1.11(22,91) to 875—1.23(22,91) do not:

- a. Require the division to index or retrieve records which contain information about an individual by that person's name or other personal identifier.
- b. Make available to the general public a record which would otherwise not be available to the general public under Iowa Code chapter 22.
- c. Govern a record in the possession of the division which is governed by the rules of another agency.
- d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
- e. Make available records compiled by the division in reasonable anticipation of court litigation or formal administrative proceedings. The availability of these records to the general public or to any subject individual or party to the litigation or proceeding shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the division.
- f. Apply to records which are not yet in existence.
- g. Require the division to create, compile, or procure a record solely for the purpose of making it available.
- h. Limit distribution of materials created or obtained by the division for the purpose of public distribution such as publications and lending materials.

1.11(3) *Warranty.* No warranty of the accuracy or completeness of any record is made.

1.11(4) *Definitions.*

"*Agency*" means any executive branch federal, state, or local governmental unit including, but not limited to, boards, commissions, departments and offices. Private employment agencies are not included.

"*Confidential record*" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the division is prohibited by law from making available for examination by members of the public. Also included are records or information contained in records that are specified as confidential by Iowa Code section 22.7 or other provision of law, but that may be disclosed upon order of a court, by the lawful custodian, or by another person duly authorized to release the record. Inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"*Custodian*" means the division or a person lawfully delegated authority to act for the division in implementing Iowa Code chapter 22.

"*Division*" means the division of labor services.

"*Open record*" means a record other than a confidential record.

"*Personally identifiable information*" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"*Record*" means the whole or a part of a division "public record" as defined in Iowa Code section 22.1.

"*Record system*" means any group of records under the control of the division from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

875—1.12(22,91) Request for access to records.

1.12(1) *Location of record.* A request for access to a record should be directed to the labor commissioner or the particular division office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to Division of Labor Services, 1000 E. Grand Avenue, Des Moines, Iowa 50319. If a request for access to a record is misdirected, division personnel will promptly forward the request to the appropriate person within the division.

1.12(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays.

1.12(3) *Request for access.* A request for access to open records shall identify the particular record sought by name or description in order to facilitate the location of the record. The custodian may require a request to be in writing. Written requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

1.12(4) *Response to request.* The response to a request for a single, open record shall generally be immediate. If the size or nature of the request requires time for compliance, the custodian shall comply with the request as soon as feasible. Examples of situations where a request may be delayed include, but are not limited to, the following:

- a.* Searching for, collecting, and copying a voluminous amount of separate and distinct records included in a single request, especially if both confidential and open records are included.
- b.* Retrieving a record from archival storage.

- c. Any of the purposes authorized by Iowa Code subsections 22.8(4) and 22.10(4).
- d. Specialized reproduction of records such as but not limited to videotapes and audiotapes.

The custodian may deny access to the record by a member of the public only on the grounds that a denial is warranted under Iowa Code subsections 22.8(4) and 22.10(4), or that the record is a confidential record, or that disclosure is prohibited by a court order. Access by a member of the public to a confidential record is limited by law and may generally be provided only in accordance with the provisions of rule 875—1.13(22,91) and other applicable provisions of law.

1.12(5) *Security of record.* No requester may, without permission from the custodian, search or remove any record, nor may a requester reorganize or damage division records. Examination and copying of division records shall be supervised by the custodian.

1.12(6) *Copying.* A reasonable number of copies of an open record may be made in the division's office. If appropriate equipment is not available in the division office where an open record is kept, the custodian shall permit its examination in that office and shall arrange for copies to be made. The division shall not copy materials where to do so may constitute a violation of law.

1.12(7) *Fees.*

a. *When charged.* The division may charge fees in connection with the examination or copying of records. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. *Copying and postage costs.* Price schedules for published materials and for photocopies of records supplied by the division shall be available in division offices. Copies of records may be made for members of the public on division photocopy machines or from electronic storage systems at the posted cost. Actual costs of shipping may also be charged to the requester.

c. *Supervisory fee.* An hourly fee may be charged for actual division expenses in searching for and supervising the examination and copying of requested records if time required is in excess of 15 minutes. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. The custodian shall make available in division offices the hourly fees to be charged.

d. *Payment.*

(1) The custodian may require a requester to make an advance payment to cover all or part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require payment in full of any amount previously due and advance payment of the full amount of an estimated fee chargeable under this subrule before the custodian processes a new request from that requester.

875—1.13(22,91) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of the confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 875—1.12(22,91).

1.13(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

1.13(2) *Requests.* The custodian may require a request to examine or copy a confidential record to be made in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

1.13(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases the record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent the delay is practicable and in the public interest, the custodian may give the subject a reasonable opportunity to seek an injunction under Iowa Code section 22.8 and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

1.13(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall provide notification, signed by the custodian, including:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A brief statement of the reasons for the denial.

1.13(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

875—1.14(22,91) Requests for treatment of a record as a confidential record and withholding from examination. The custodian may treat a record as a confidential record and withhold the record from examination and copying only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order.

1.14(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts the custodian is authorized to treat the record as confidential by Iowa Code section 22.7, another applicable provision of law, or a court order, may request the record be treated as a confidential record and be withheld from public inspection.

1.14(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and filed with the custodian. The request shall set forth the legal and factual basis justifying confidential treatment for the record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the time period for which confidential treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the division by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

1.14(3) Failure to request. The custodian may treat a record as confidential even if no request has been received. However, if a person who has submitted business information to the division does not request that it be withheld from public inspection under Iowa Code section 22.7, the custodian of records containing that information may proceed as if that person has no objection to disclosure.

1.14(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record is filed or when the custodian receives a request for access to the record by a member of the public.

1.14(5) Request granted. If a request for such confidential record treatment is granted, a copy of the record from which the matter in question has been redacted or deleted will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian may make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record of the request.

1.14(6) Request denied. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, if a court directs the custodian to treat it as a confidential record, to the extent permitted by another applicable provision of law, or with the consent of the person requesting access. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record.

875—1.15(22,91) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of a record to alter the original copy or to expand the official record of any division proceeding. Written statements of additions, dissents, or objections shall be sent to the custodian or to the Labor Commissioner, 1000 E. Grand Avenue, Des Moines, Iowa 50319. Written statements of additions, dissents, or objections must be dated and signed and shall include the current address and telephone number of the requester or the requester's representative.

875—1.16(22,91) Consent to disclosure by the subject of a confidential record. A person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party to the extent permitted by law. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the division on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the division to disclose records about that person to the person's attorney.

A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the division may to the extent permitted by law be treated as an authorization to release relevant information about the subject to the official.

875—1.17(22,91) Disclosure without the consent of the subject. Disclosure of a confidential record may occur without the consent of the subject to the extent allowed by law. Following are instances where the division may disclose records without consent of the subject and usually without notice:

1.17(1) For a routine use as described in rule 875—1.19(22,91) or in the notice for a particular record system.

1.17(2) To another agency for a civil, administrative, or criminal law enforcement activity.

1.17(3) To a requester who has provided the division with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that the record is transferred in a form that does not identify the subject.

1.17(4) To a requester pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

1.17(5) To the legislative fiscal bureau under Iowa Code section 2.52.

1.17(6) In response to a court order or subpoena.

1.17(7) Disclosures in the course of division employee disciplinary proceedings.

1.17(8) To the citizens' aide under Iowa Code section 2C.9(3).

875—1.18(22,91,77GA,ch1105) Availability of records.

1.18(1) General. Any division record or portion of a record is an open record unless it is a confidential record as listed at 1.18(2). Any division record may be confidential, either in whole or in part, depending on its contents, except the following:

a. State performance activity measures; directives adopted by IOSH; and citations issued and received pursuant to Iowa Code chapter 88.

b. Operating permits and certificates of insurance relating to amusement devices or rides, concession booths, or related electrical equipment covered by Iowa Code chapter 88A.

c. List of permitted asbestos removal and encapsulation companies and asbestos ten-day notifications pursuant to Iowa Code chapter 88B.

d. Certificates of inspection concerning objects covered by Iowa Code chapter 89.

e. List of owners of facilities regulated under Iowa Code chapter 89A and related permits and certificates of insurance.

f. List of registered professional boxers and bonds filed by fight promoters pursuant to Iowa Code chapter 90A.

g. Lists of formerly registered construction contractors; bonds and certificates of insurance filed by construction contractors pursuant to Iowa Code chapter 91C; and citations issued pursuant to Iowa Code chapter 91C.

h. Iowa child labor Form III collected pursuant to Iowa Code chapter 92.

i. List of private employment agencies licensed pursuant to Iowa Code chapter 95.

j. Lists of publications and educational materials available to the public; unaltered copies of documents published by the division; administrative rules; interstate agreements and interagency agreements to which the division is a party; purchase requests; records concerning the transfer of files to archives; and speech records.

1.18(2) Confidential records. With the exception of “*f*,” each of the following may contain personally identifiable information. Each of the following is confidential or partially confidential.

- a.* Records or portions of records which are exempt from disclosure pursuant to Iowa Code section 22.7.
- b.* Records or portions of records which are protected by Iowa Code section 88.1, 88.6, 88.12, 88.14, or 88.16.
- c.* Records or portions of records containing social security numbers which are protected by 42 U.S.C. Section 405(c)(2)(C)(viii).
- d.* Records or portions of records containing tax information which are protected by 26 U.S.C. Section 7213(a)(2) or Iowa Code section 422.20 or 422.72.
- e.* Records or portions of records which are protected pursuant to Iowa Code section 515A.13.
- f.* Pursuant to Iowa Code sections 17A.2 and 17A.3, those portions of division staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by division staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the division.
- g.* Identifying details and trade secrets in final orders, decisions and opinions to the extent permitted by Iowa Code subsection 17A.3(1).
- h.* Records or portions of records containing attorney work product or attorney-client communications, or which are otherwise privileged pursuant to Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), rules of evidence, case law, and the Code of Professional Responsibility.
- i.* Minutes of closed meetings of a government body pursuant to Iowa Code section 21.5(4).
- j.* Information protected by 42 U.S.C. 11044(a) or by Iowa Code sections 89B.12 and 89B.13.
- k.* Records of the bureau of labor statistics which were created or obtained pursuant to federal grants if release of the records would cause the denial of federal funds.
- l.* Information protected by 1998 Iowa Acts, chapter 1105.
- m.* Any other information made confidential by law.

875—1.19(22,91) Routine uses. To the extent allowed by law, the following uses are considered routine uses of all division records:

1.19(1) Disclosure to government officers, employees, and agents who have a need for the record in the performance of their duties. The custodian of the record may upon request of any government officer, employee, or agent, or on the custodian’s own initiative, determine what constitutes legitimate need to use a confidential record.

1.19(2) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

875—1.20(22,91) Release to a subject.

1.20(1) The subject of a confidential record may file a written request to review a confidential record about that person as provided in rule 875—1.12(22,91). However, the division need not release the following records to the subject:

- a.* The identity of a person providing information to the division need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. A record need not be disclosed to the subject when it is the work product of an attorney or is otherwise privileged.

c. A peace officer's investigative report may be withheld from the subject pursuant to Iowa Code section 22.7(5).

d. As otherwise authorized by law.

1.20(2) Where a record has multiple subjects with interest in the confidentiality of the record, the division may take reasonable steps to protect confidential information relating to another subject.

875—1.21(22,91) Notice to suppliers of information. Required notice to suppliers of information is provided by this rule and may be provided by any other appropriate means such as letters, brochures, formal agreements, contracts, forms, handbooks, manuals, or statements. This division may share information with persons outside the division for any routine use as described at rule 875—1.19(22,91) and for releases under Iowa Code chapter 22. Information obtained by the division will be used to enforce and implement those provisions of law delegated to the labor commissioner.

All information the division deems necessary and requests to administer Iowa Code chapters 30 and 88 through 95 is required. Failure to provide requested information may result in any combination of the following:

1. Inability to provide desired assistance or services.
2. The division's seeking or issuing a subpoena or warrant.
3. The division's proceeding as though the information does not exist or exists but is detrimental to the person from whom the information was requested.
4. Appropriate actions or sanctions pursuant to relevant law.
5. Referrals.

875—1.22(22,91) Data processing systems comparison. The first reports of injury data systems shared between the labor services division and the workers' compensation division of the workforce development department permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Pursuant to Iowa Code chapter 252J, personally identifiable information about asbestos licensees, asbestos permittees, amusement ride permittees, boxers, special inspectors, registered construction contractors, and private employment agency licensees found in data processing systems may be matched, collated, or compared with personally identifiable information in data processing systems maintained by the child support recovery unit of the department of human services. All data processing systems that have common data elements can potentially match, collate, and compare personally identifiable information.

875—1.23(22,91) Personally identifiable information. This rule describes the nature and extent of personally identifiable information collected, maintained, and retrieved from division record systems by personal identifier. Except as noted below, record systems are partially open and partially confidential. Except as noted below, information is stored on paper and electronically.

1.23(1) Personally identifiable information concerning some facility owners who file tier II reports is collected pursuant to Iowa Code section 30.12. The information concerns hazardous materials at the facility.

1.23(2) Personally identifiable information concerning employers who requested services from the consultation and education bureau is collected pursuant to Iowa Code chapter 88. The information concerns services provided by the bureau. The record system is confidential.

1.23(3) Personally identifiable information concerning employees who filed discrimination complaints and employers against whom discrimination complaints were filed is collected pursuant to Iowa Code chapter 88. The information relates to the relevant division inspection.

1.23(4) Personally identifiable information concerning employers whose workplaces have been inspected by the IOSH enforcement bureau is collected pursuant to Iowa Code chapter 88. The information relates to the enforcement inspection.

1.23(5) Personally identifiable information concerning work-related fatalities is collected pursuant to Iowa Code section 88.18. The information includes biographical data about the deceased and information concerning the IOSH fatality inspection.

1.23(6) Personally identifiable information concerning owners or operators of amusement devices or rides, concession booths, or related electrical equipment covered by Iowa Code chapter 88A is collected pursuant to that chapter. The information pertains to the division's inspections.

1.23(7) Personally identifiable information concerning asbestos licensees and permittees is collected pursuant to Iowa Code chapter 88B. Biographical information concerning the asbestos licensees and permittees and information concerning the licenses and permits is included.

Personally identifiable information concerning asbestos licensees and permittees against whom disciplinary action has been taken or attempted is collected pursuant to Iowa Code chapter 88B. The disciplinary action files are stored on paper and contain information concerning division investigations, reprimands, suspensions, revocations, denials, and related litigation.

1.23(8) Personally identifiable information concerning boiler special inspectors against whom disciplinary action has been taken or attempted is collected pursuant to Iowa Code chapter 89. The record system is stored on paper and contains information concerning division investigations, reprimands, suspensions, revocations, denials, and related litigation.

1.23(9) Personally identifiable information concerning special inspectors is collected pursuant to Iowa Code chapters 89 and 89A. The record systems are stored on paper and contain biographical information on special inspectors, information on their commissions, and, when applicable, certificates of insurance.

1.23(10) Personally identifiable information concerning owners and operators of facilities and objects covered by Iowa Code chapters 89 and 89A is collected pursuant to those chapters. The information concerns division regulation of covered objects and facilities.

1.23(11) Personally identifiable information concerning individuals who are certified to perform safety tests or are recognized elevator companies is collected pursuant to Iowa Code chapter 89A. The information is maintained on paper and includes biographical data and information on the certification or recognition.

1.23(12) Personally identifiable information concerning registered boxers is collected pursuant to Iowa Code chapter 90A. The information includes biographical data and information pertaining to the registration.

1.23(13) Personally identifiable information concerning division employees and former employees is collected pursuant to Iowa Code chapter 91. The information is stored on paper and includes biographical data, medical records, qualifications, and tax information. The record system is confidential.

1.23(14) Personally identifiable information concerning wage claimants, wage discrimination complainants and individual employers against whom wage claims or wage discrimination complaints have been filed is collected pursuant to Iowa Code chapter 91A. The information includes biographical data and information on the division's investigations.

1.23(15) Personally identifiable information concerning owners, partners, and officers of construction contractor applicants is collected pursuant to Iowa Code chapter 91C. The information includes biographical data and information about the registration.

Personally identifiable information concerning individual out-of-state contractors who have filed bonds is collected pursuant to Iowa Code chapter 91C. The information is stored on paper and relates to the bonds. The record system is open.

Personally identifiable information concerning individuals who have been cited under Iowa Code chapter 91C is collected pursuant to that chapter. The information includes biographical data and information concerning the citations and relevant litigation.

1.23(16) Personally identifiable information concerning private employment agency licensees is collected pursuant to Iowa Code chapter 95. The information includes biographical data and information about the private employment agency license.

875—1.24 to 1.30 Reserved.

DIVISION III
RULE-MAKING PROCEDURES

875—1.31(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the division are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

875—1.32(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the division may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rule making by the division by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

875—1.33(17A) Public rule-making docket.

1.33(1) *Docket maintained.* The division will maintain a current public rule-making docket.

1.33(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the division. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the commissioner for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of division personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the division of that possible rule. The division may also include in the docket other subjects upon which public comment is desired. Drafts of proposed federal regulations are provided to the division for review and comment. These drafts are provided on condition that the draft remain confidential. The division does not consider these drafts to be state documents triggering a rule’s being “anticipated.” Employees of the division serve on various national consensus organizations developing recommended new guidelines. The division does not consider these as “anticipated” rules.

1.33(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or by the rule’s becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any division determinations with respect thereto;
- h. Any known timetable for the division’s decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

875—1.34(17A) Notice of proposed rule making.

1.34(1) Contents. At least 35 days before the adoption of a rule, the division will cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the division will include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the division for the resolution of each of those issues.

1.34(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 1.42(2) of this chapter.

1.34(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription shall file a written request indicating the name and address to which the notices are to be sent. The request shall be filed with the division's rules coordinator. Additionally, the request shall state the chapter(s) or subjects for which the requester seeks copies. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the division will mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the division for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price. The cost of electronic transmission is \$50 per fiscal year. The cost of providing copies of the notices is \$0.50 per page payable within 30 days of mailing the notice. The cost of providing Notices of Intended Action by facsimile is \$1 per page. Failure to pay the cost for a copy will result in the cancellation of the subscription.

875—1.35(17A) Public participation.

1.35(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions shall identify the proposed rule to which they relate and shall be submitted to the person and address designated in the Notice of Intended Action.

1.35(2) Oral proceedings. The division will schedule an oral proceeding on a proposed rule. The division's scheduled oral proceeding on a proposed rule will be held if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the division's rules coordinator by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

1.35(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)"b" as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and will not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. A member of the division will preside at the oral proceeding on a proposed rule.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the division at least three business days prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and will be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer will give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the division's decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer will have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. The submissions become the property of the division.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding will not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

1.35(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the division may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

1.35(5) Accessibility. The division will schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the division's rules coordinator at (515)281-3445 in advance to arrange access or other needed services.

875—1.36(17A) Regulatory analysis.

1.36(1) Definition of small business. A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

1.36(2) Mailing list. Small businesses or organizations of small businesses may be registered on the division's small business impact list by making a written application addressed to the division's rules coordinator. The application for registration shall state:

- a.* The name of the small business or organization of small businesses;
- b.* Its address;

- c. The name of a person authorized to transact business for the applicant;
- d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The division may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The division may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

1.36(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the division will mail to all registered small businesses or organizations of small businesses, in accordance with the request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the division will mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

1.36(4) *Qualified requesters for regulatory analysis—economic impact.* The division will issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

1.36(5) *Qualified requesters for regulatory analysis—business impact.* The division will issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

1.36(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the division will adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

1.36(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the division. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

1.36(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

1.36(9) *Publication of a concise summary.* The division will make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

1.36(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis will conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

1.36(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

875—1.37(17A,25B) Fiscal impact statement.

1.37(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services will be accompanied by a fiscal impact statement outlining the costs associated with the rule. The fiscal impact statement will satisfy the requirements of Iowa Code section 25B.6.

1.37(2) If the division determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the division will, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

875—1.38(17A) Time and manner of rule adoption.

1.38(1) Time of adoption. The division will not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the division will adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

1.38(2) Consideration of public comment. Before the adoption of a rule, the division will consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

1.38(3) Reliance on agency expertise. Except as otherwise provided by law, the division may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

875—1.39(17A) Variance between adopted rule and published notice of proposed rule adoption.

1.39(1) The division will not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice;
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

1.39(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the division shall consider the following factors:

- a.* The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

1.39(3) The division will commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the division finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

1.39(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the division to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

875—1.40(17A) Exemptions from public rule-making procedures.

1.40(1) *Omission of notice and comment.* To the extent the division for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the division may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The division will incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

1.40(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

- a.* Rules implementing legislation which will become effective before the normal procedures could be followed.
- b.* National consensus standards and federal occupational safety and health regulations are adopted by reference. These documents are published and available to the public in advance of publication of a Notice of Intended Action by the division. The commissioner is required to adopt federal occupational safety and health regulations pursuant to Iowa Code subsection 88.5(1). At times, these rules, when adopted, are effective upon publication in the Iowa Administrative Bulletin.

1.40(3) *Public proceedings on rules adopted without public proceedings.* The division may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 1.40(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the division will commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 1.40(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the division may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 1.40(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

875—1.41(17A) Concise statement of reasons.

1.41(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the division will issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Division of Labor Services, Division Rules Coordinator, 1000 East Grand, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

1.41(2) *Contents.* The concise statement of reasons will contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the division's reasons for overruling the arguments made against the rule.

1.41(3) *Time of issuance.* After a proper request, the division will issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

875—1.42(17A,89) Contents, style, and form of rule.

1.42(1) *Contents.* Each rule adopted by the division will contain the text of the rule and, in addition:

- a. The date the division adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the division in its discretion decides to include the reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the division in its discretion decides to include such reasons; and
- g. The effective date of the rule.

1.42(2) *Incorporation by reference.* The division may incorporate, by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the division finds that the incorporation of its text in the division proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the division's proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The division may incorporate such matter by reference in a proposed or adopted rule only when the division makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the division, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The division will retain a copy of any materials incorporated by reference in a rule of the division for two years after the rule ceases to be in effect.

When the division adopts a publication by reference, it will provide a copy of the publication to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically, except:

a. Copies of materials are not required to be submitted if the division follows Iowa Code section 89.5(4).

b. Copies of the Code of Federal Regulations and the Federal Register which the state law library possesses.

1.42(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the division will prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained. The division will provide a copy of that full text at actual cost or review in the offices of the division. Upon request, the division will copy or obtain a copy of the document if requested, provided that the division will not photocopy materials protected by copyright. The division may make the standards available electronically.

At the request of the administrative code editor, the division will provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

1.42(4) *Style and form.* In preparing its rules, the division will follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

875—1.43(17A) Agency rule-making record.

1.43(1) *Requirement.* The division will maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference will be available for public inspection.

1.43(2) Contents. The division's rule-making record will contain:

- a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of the division's submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;
- b. Copies of any portions of the division's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;
- c. All written petitions, requests, and submissions received by the division, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the division and considered by the labor commissioner, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the division is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the division will identify in the record the particular materials deleted and state the reasons for that deletion;
- d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;
- e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;
- f. A copy of the rule and any concise statement of reasons prepared for that rule;
- g. All petitions for amendments of, or repeal or suspension of, the rule;
- h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;
- i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection; and
- j. A copy of any executive order concerning the rule.

1.43(3) Effect of record. Except as otherwise required by a provision of law, the division rule-making record required by this rule may not constitute the exclusive basis for division action on that rule.

1.43(4) Significant written criticisms. Written criticisms of a rule may be submitted to the division and directed to the Division of Labor Services, Division Rules Coordinator, 1000 East Grand, Des Moines, Iowa 50319. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, state it is a criticism of a specific rule, state the rule number, and provide reasons for criticism of the rule. All written rule criticisms received will be kept in a separate record for a period of five years.

1.43(5) Maintenance of record. The division will maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 1.43(2) "g," "h," "i," or "j."

875—1.44(17A) Filing of rules. The division will file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal note impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal note impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the division will use the standard form prescribed by the administrative rules coordinator.

875—1.45(17A) Effectiveness of rules prior to publication.

1.45(1) *Grounds.* The division may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The division will incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

1.45(2) *Special notice.* When the division makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the division will employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the division to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the division of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, or personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 1.45(2).

875—1.46(17A) General statements of policy.

1.46(1) *Compilation, indexing, public inspection.* The division will maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

1.46(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subrule shall not be relied on by the division to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 1.46(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

875—1.47(17A) Review by agency of rules.

1.47(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the division to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the division will conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The division may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

1.47(2) In conducting the formal review, the division will prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the division’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the division or granted by the division. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the division’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

875—1.48 and 1.49 Reserved.

DIVISION IV
DECLARATORY ORDERS

875—1.50(17A) **Petition for declaratory order.** Any person may file a petition with the division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division. A petition is deemed filed when it is received by the division. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form.

DIVISION OF LABOR SERVICES

Petition by (Name of Petitioner)
for a Declaratory Order on
(Cite provisions of law involved).



PETITION FOR
DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 1.53(17A).

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

875—1.51(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division shall give notice of the petition to all persons not served by the petitioner pursuant to rule 1.55(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.

875—1.52(17A) Intervention.

1.52(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

1.52(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division.

1.52(3) A petition for intervention shall be filed at the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DIVISION OF LABOR SERVICES

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. Facts supporting the intervenor’s standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor’s interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

875—1.53(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

875—1.54(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Declaratory Orders Coordinator, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

875—1.55(17A) Service and filing of petitions and other papers.

1.55(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

1.55(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Declaratory Orders Coordinator, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

1.55(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 875—1.75(17A).

875—1.56(17A) Consideration. Upon request by petitioner, the division shall schedule a brief and informal meeting between the original petitioner, all intervenors, or a member of the staff of the division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

875—1.57(17A) Action on petition.

1.57(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the labor commissioner or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

1.57(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 875—1.66(17A).

875—1.58(17A) Refusal to issue order.

1.58(1) The division shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other division or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the division to determine whether a statute is unconstitutional on its face.

1.58(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

1.58(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue a ruling.

875—1.59(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

875—1.60(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

875—1.61(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. The issuance of a declaratory order constitutes final agency action on the petition.

875—1.62 to 1.64 Reserved.

DIVISION V
CONTESTED CASES

875—1.65(17A) Scope and applicability. This division applies to contested case proceedings conducted by the division of labor services. Rules of the employment appeal board are applicable for some contested cases regarding boiler safety, elevator safety, and occupational safety and health inspections and contractor registration investigations.

875—1.66(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the labor commissioner or designee.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the division of labor services did not preside.

875—1.67(17A) Time requirements.

1.67(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

1.67(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

875—1.68(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the division's action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific division action which is disputed, and include a short and plain statement of the issues of material fact in dispute. If the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved.

875—1.69(17A) Notice of hearing.

1.69(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure;
- b. Certified mail, return receipt requested;
- c. First-class mail;
- d. Publication, as provided in the Iowa Rules of Civil Procedure; or
- e. If requested, by facsimile, or electronic transmission.

1.69(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as attorney for the commissioner or division and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement. The parties are encouraged to meet informally to resolve issues that might culminate in a resolution of issues in the contested case;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer;
- i. A statement that a party, at its own expense, may be represented by counsel in the contested case; and
- j. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 1.70(17A), that the presiding officer be an administrative law judge.

875—1.70(17A) Presiding officer.

1.70(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days, or such other time period as the order may prescribe, after service of a notice of hearing which identifies or describes the presiding officer as the labor commissioner.

1.70(2) The division may deny the request only upon a finding that one or more of the following apply:

a. Neither the division nor the commissioner under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

1.70(3) The division will issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

1.70(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commissioner. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

1.70(5) Unless otherwise provided by law, the commissioner, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this division which apply to presiding officers.

875—1.71(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this division. However, the division in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

875—1.72(17A) Disqualification.

1.72(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

1.72(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other division functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by 1998 Iowa Acts, chapter 1202, section 19(3), and subrules 1.72(3) and 1.86(9).

1.72(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

1.72(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 1.72(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 1.88(17A) and seek a stay under rule 1.93(17A).

875—1.73(17A) Consolidation—severance.

1.73(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

1.73(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

875—1.74(17A) Answer.

1.74(1) Answer:

a. Any answer required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. An answer shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;

- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the party and the party's attorney, if any.

c. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the notice of hearing. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

Any allegation in the notice of hearing not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

1.74(2) Amendment. Any notice of hearing, answer, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

875—1.75(17A) Pleadings, service and filing.

1.75(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

1.75(2) When service is required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as attorney for the division, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

1.75(3) How service is made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

1.75(4) When filing is required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the division at 1000 East Grand Avenue, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the division.

1.75(5) When filing is made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the division, delivered to an established courier service for immediate delivery to the division, or mailed by first-class mail or state interoffice mail to the division, so long as there is proof of mailing.

1.75(6) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (state: a United States post office mailbox with correct postage properly affixed, state interoffice mail, courier).

(Date)

(Signature)

875—1.76(17A) Discovery.

1.76(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by an order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

1.76(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 1.76(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

1.76(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

875—1.77(17A) Subpoenas.**1.77(1) Issuance.**

a. A division subpoena shall be issued to a party upon written request. The request shall include the name, address, and telephone number of the requesting party. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

1.77(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

875—1.78(17A) Motions.

1.78(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought, unless otherwise permitted by the presiding officer.

1.78(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

1.78(3) The presiding officer may schedule oral argument on any motion.

1.78(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by an order of the presiding officer.

1.78(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 1.92(17A) and appeal pursuant to rule 1.91(17A).

875—1.79(17A) Prehearing conference. For good cause the presiding officer may permit variances from this rule.

1.79(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties.

1.79(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at the hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at the hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

1.79(3) In addition to the requirements of subrule 1.79(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

1.79(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

875—1.80(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

1.80(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The division may waive notice of such requests for a particular case or an entire class of cases.

1.80(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

875—1.81(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

875—1.82(17A) Intervention.

1.82(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

1.82(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner.

1.82(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

1.82(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

1.82(5) Nonresponsive intervenor. If a negotiated settlement is reached between all parties except the intervenor, the settlement shall be set down in writing and shall contain the various points of settlement and stipulations.

Input from intervenors may assist in the settlement of a contested case. The division will assume an intervenor does not object to a settlement if the intervenor does not respond to the division by signing the settlement or presenting written comments on the settlement within 14 days from the date the settlement is sent for signature. If the parties, other than the intervenor, wish to file the settlement over the objection of the intervenor, the parties shall attach the intervenor's written objection and a statement as to why the intervenor's objection was not acceptable to the other parties and should not block the entering of a final order.

875—1.83(17A) Hearing procedures.

1.83(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

1.83(2) All objections shall be timely made and stated on the record.

1.83(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

1.83(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

1.83(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

1.83(6) Witnesses may be sequestered during the hearing.

1.83(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

1.83(8) Telephone or video conferencing proceedings. The presiding officer may resolve preliminary procedural motions by telephone or video conference in which all parties have an opportunity to participate. Other telephone or video proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

875—1.84(17A) Evidence.

1.84(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

1.84(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

1.84(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

1.84(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

1.84(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

1.84(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

875—1.85(17A) Default.

1.85(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

1.85(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

1.85(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless (a) within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or (b) an appeal of a decision on the merits is timely initiated within the time provided by rule 1.91(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact. The affidavit(s) must be attached to the motion.

1.85(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

1.85(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

1.85(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

1.85(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 1.88(17A).

1.85(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

1.85(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues. If the defaulting party has appeared, the default decision cannot exceed the relief demanded.

1.85(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 1.93(17A).

875—1.86(17A) Ex parte communication.

1.86(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in the case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the division or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 1.72(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

1.86(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

1.86(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

1.86(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 1.75(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone calls including all parties or their representatives.

1.86(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

1.86(6) The commissioner and other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 1.86(1).

1.86(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 1.80(17A).

1.86(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

1.86(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

1.86(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the division. Violation of ex parte communication prohibitions by division personnel shall be reported to the commissioner for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

875—1.87(17A) Recording costs. Upon request, the division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

875—1.88(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commissioner may review an interlocutory order. In determining whether to do so, the commissioner shall weigh the extent to which the granting of the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

875—1.89(17A) Final decision—nonlicense decision.

1.89(1) When the commissioner presides over the reception of evidence at the hearing, the commissioner's decision is a final decision.

1.89(2) When the commissioner does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the division without further proceedings unless there is an appeal to, or review on motion of, the commissioner within the time provided in rule 1.91(17A).

1.89(3) A settlement agreement, when signed by parties and the commissioner or presiding officer, is binding on all parties.

875—1.90(17A) Final decision—license decision. In addition to the requirements of rule 1.89(17A), options are available for a final decision in a case involving a license, permit, registration, commission, or similar authorization. The decision may include the following:

1. Exoneration.
2. Revocation of license.
3. Suspension of license until further order or for a specific period.
4. Nonrenewal of license.
5. Prohibited permanently from engaging in specified procedures or practices until further order or for a specific period.
6. Probation.
7. Require additional education or training.
8. Require reexamination.
9. Order a physical examination.
10. Impose civil penalty.
11. Issue citation.
12. Such other sanctions allowed by law as may be appropriate.

875—1.91(17A) Appeals and review.

1.91(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the commissioner within 30 days after issuance of the proposed decision.

1.91(2) Review. The commissioner may initiate review of a proposed decision on the commissioner's own motion at any time within 30 days following the issuance of such a decision.

1.91(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the division. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

- d. The relief sought; and
- e. The grounds for relief.

1.91(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The commissioner may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

1.91(5) *Scheduling.* The division shall issue a schedule for consideration of the appeal.

1.91(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The commissioner may resolve the appeal on the briefs or provide an opportunity for oral argument. The commissioner may shorten or extend the briefing period as appropriate.

875—1.92(17A) Applications for rehearing.

1.92(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

1.92(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the division's decision on the existing record and whether, on the basis of the grounds enumerated in subrule 1.91(4), the applicant requests an opportunity to submit additional evidence.

1.92(3) *Time of filing.* The application shall be filed with the division within 20 days after issuance of the final decision.

1.92(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the division shall serve copies on all parties.

1.92(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the division grants the application within 20 days after its filing.

875—1.93(17A) Stays of agency actions.

1.93(1) *When available.*

a. Any party to a contested case proceeding may petition the division for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the division. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The commissioner may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the division for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

1.93(2) *When granted.* In determining whether to grant a stay, the presiding officer or the commissioner shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

1.93(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the division or any other party.

875—1.94(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

875—1.95(17A) Emergency adjudicative proceedings.

1.95(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the division may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the division by emergency adjudicative order. Before issuing an emergency adjudicative order the division shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the division is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the division is necessary to avoid the immediate danger.

1.95(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the division's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the division;
- (3) Certified mail to the last address on file with the division;
- (4) First-class mail to the last address on file with the division; or
- (5) Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that division orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the division shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

1.95(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

1.95(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which division proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further division proceedings to a later date will be granted only in compelling circumstances upon application in writing.

875—1.96 to 1.98 Reserved.

DIVISION VI
INTEREST, FEES AND CHARGES

875—1.99(17A,91) Interest. The commissioner may assess and collect interest on fees, penalties, and other amounts due the division. Interest shall accrue from the first of the month following the date when payment was due. If it becomes necessary to initiate legal actions to recover the money, the commissioner may recover court costs and attorney fees in addition to the interest. The interest rate shall be 10 percent per annum.

875—1.100 Reserved.

DIVISION VII
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

875—1.101(17A,91) Scope.

1.101(1) These rules provide general procedures for waivers and variances from division rules. Specific waiver or variance procedures must be followed when applicable. No waiver or variance may be granted from a requirement or duty imposed by statute or when granting a waiver or variance would cause a denial of federal funds or be inconsistent with federal statute or regulation. Any waiver or variance must be consistent with statute. These waiver and variance procedures do not apply to rules that merely define the meaning of a statute or other provision of law unless the division possesses delegated authority to bind the courts with its rules.

1.101(2) Waivers or variances of rules may be granted either in response to a petition for waiver or variance filed within a contested case proceeding, or in response to a petition filed in the absence of a contested case proceeding.

875—1.102(17A,91) Petitions. If the petition for waiver or variance relates to a pending contested case, the petition shall be filed in the contested case proceeding. Other petitions must be submitted in writing to Labor Commissioner, 1000 E. Grand Avenue, Des Moines, Iowa 50319. In either case, the petition shall include the following information where applicable:

1.102(1) The name, address, case file number or state identification number, and telephone number of the person requesting the waiver or variance and the person's representative, if any.

1.102(2) A description and citation of the specific rule to which the petition applies.

1.102(3) The specific waiver or variance requested, including the precise scope and time period for the waiver or variance.

1.102(4) The relevant facts the petitioner believes justify a waiver or variance.

1.102(5) A description of any prior contacts between the division and the petitioner relating to the subject matter of the proposed waiver or variance, including but not limited to a list or description of division licenses, registrations, or permits held by the petitioner, and any notices of violation, citations, contested case hearings, or investigative reports relating to the subject matter of the proposed waiver or variance within the last five years.

1.102(6) The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the grant of a waiver or variance.

1.102(7) Any information known to the petitioner regarding the division's treatment of similar cases.

1.102(8) The name, address, and telephone number of all persons inside or outside state government who would be adversely affected by the grant of the petition or who possess knowledge of relevant facts.

1.102(9) A signed release of information authorizing persons with knowledge regarding the request to furnish the division with information pertaining to the waiver or variance.

1.102(10) A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition.

875—1.103(17A,91) Notice and acknowledgment. The division will acknowledge petitions upon receipt. The division shall ensure that 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 within 30 days of receipt of the petition. The division may require the petitioner to serve the notice and a concise summary on all persons to whom notice is required by any provision of law, and provide a written statement to the division attesting that notice has been provided. Notice and a concise summary may also be provided to others.

875—1.104(17A,91) Review. Each petition for a waiver or variance shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. Discretion to grant or deny a waiver or variance petition rests with the labor commissioner or the labor commissioner's designee. The burden of persuasion shall be upon the petitioner. The division may request additional information relating to the requested waiver or variance from the petitioner and may conduct any necessary and appropriate investigation.

1.104(1) A waiver or variance may be granted if the division finds all of the following based on clear and convincing evidence:

a. Application of the rule would pose an undue hardship on the person for whom the waiver or variance is requested;

b. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law;

c. Waiver or variance of the rule in the specific circumstances would not prejudice the substantial legal rights of any person or cause a denial of federal funds; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

1.104(2) Petitioners requesting permanent waivers or variances must also show that a temporary waiver or variance would be impracticable.

875—1.105(17A,91) Ruling.

1.105(1) The division shall grant or deny all requests as soon as practicable, but no later than 120 days from receipt without consent of the petitioner. However, waiver or variance petitions filed in contested cases shall be granted or denied no later than the date of the decision in the contested case proceeding. Failure to grant or deny a petition within the required time period shall be deemed a denial.

1.105(2) If a waiver or variance is granted, it shall be drafted to provide the narrowest exception possible to the provisions of the rule. The ruling shall be in writing and shall include the reasons for granting or denying the petition and, if approved, the time period during which the waiver or variance is effective. The division may place any condition on a waiver or variance that the division finds desirable to protect the public health, safety, and welfare.

1.105(3) Within seven days of issuance of the ruling, a copy shall be mailed to the petitioner or the petitioner's representative, and to any other person(s) entitled to such notice by any provision of law or rule.

875—1.106(17A,91) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) "e," orders granting and denying waivers or variances shall be indexed by rule and available for public inspection.

875—1.107(17A,91) Cancellation. The division may cancel a waiver or variance upon appropriate notice and hearing if the facts alleged in the petition or supplemental information provided were not true, material facts were withheld or have changed, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, the requester has failed to comply with conditions set forth in the waiver or variance approval, or the rule or enabling Act has been amended.

875—1.108(17A,91) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

875—1.109(17A,91) Appeals. Appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A. An appeal shall be taken within 30 days of the ruling. However, any appeal from a decision on a petition for waiver or variance in a contested case proceeding shall be in accordance with the procedures for appeal of the contested case decision.

These rules are intended to implement Iowa Code chapters 17A, 22 and 91, 2000 Iowa Acts, House File 2206, and Executive Order Number Eleven.

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