

VETERINARY MEDICINE BOARD[811]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 5
“Public Records and Fair Information Practices”

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

Public Hearing

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

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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

Purpose and Summary

Proposed Chapter 5 provides the public with information about how the Board handles both public and confidential records, as well as requests for such records.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

Only citizens or groups that request public records would bear any costs under this rulemaking, and those costs would only be imposed if the search or review exceeds 30 minutes.

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

The public and regulated community will benefit from the proposed rulemaking because it explains the process and requirements for making a public records request with the Board.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The costs are the fees imposed to review and copy public records, but only if the search or review exceeds 30 minutes. The fees vary depending upon the size and scope of the public records request. However, Board staff members try to give an estimate of any such costs prior to conducting the actual records review to give the requestor an opportunity to expand/narrow the search depending upon costs.

- Qualitative description of impact:

The only qualitative impact is that it will take staff time to process requests.

3. Costs to the State:

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

The costs would be limited to time spent by the Board and staff in responding to and supervising or reviewing public records responsive to the request, but the Board charges copying and supervisory fees to cover some of the costs of responding to a public records request, mitigating the actual costs to the State. However, for requests that do not exceed 30 minutes to search and/or review, the costs to the State are not covered by any fees as fees are not assessed.

- Anticipated effect on state revenues:

There are likely minimal effects on state revenues since some of the costs to the State are covered by the fees assessed for public records requests that exceed 30 minutes to search and/or review, and the requests that do not exceed 30 minutes have a minimal impact on Board staff or resources.

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

Failure to have a specific process for making a public records request, including what, if any, costs are associated with a response and what records are public versus confidential, could lead to increased costs or burdens to the Board and State because more staff time will be required to answer questions from the public and regulated community about the process or costs, which may also increase the costs or time required by the public or licensees to properly prepare a public records request.

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

There does not appear to be any less costly method because the process and costs for making a public records request need to be included in Chapter 5 to properly inform the public and regulated community about the process and costs. In order to promote efficiency and reduce costs, the Board adopted by reference the Uniform Rules on Agency Procedure related to public records and fair information practices.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Only citizens or groups that make a public records request would bear any costs under this rulemaking, and there does not appear to be any additional impact on small business to prepare a public records request.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The board of veterinary medicine hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices, which are published at

www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website, with the addition of new rules 811—5.9(17A,22) through 811—5.16(17A,22).

811—5.1(17A,22) Definitions. In lieu of “(official or body issuing these rules)”, insert “board of veterinary medicine”.

811—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of “(insert agency head)”, insert “state veterinarian as secretary of the board of veterinary medicine”. In lieu of “(insert agency name and address)”, insert “Board of Veterinary Medicine, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

5.3(2) Office hours. In lieu of the parenthetical statement, insert “8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays”.

5.3(7) Fees.

a. When charged. 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.

c. Supervisory fee. In lieu of “(specify time period)”, insert “one-half hour”.

811—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of “(designate office)”, insert “the board of veterinary medicine”.

811—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 811—5.10(17A,22) or in any notice for a particular record system.
- b.* To a recipient who has provided the agency 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.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual 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.
- e.* To the legislative services agency under Iowa Code section 2A.3.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

811—5.10(17A,22) Routine use.

5.10(1) “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose that is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

- a.* Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.
- b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.
- d.* Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

811—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 811—5.7(17A,22).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

811—5.12(17A,22) Release to subject.

5.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 811—5.6(17A,22). The agency need not release the following records to the subject:

a. The identity of a person providing information to the agency 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. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. Any others authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

811—5.13(17A,22) Availability of records.

5.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection:

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Records that are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

f. Those portions of agency staff manuals, instructions or other statements issued that set forth criteria or guidelines to be used by agency staff in circumstances authorized by Iowa Code sections 17A.2 and 17A.3.

g. Records that constitute attorney work product, constitute attorney-client communications, or are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Any other records considered confidential by law.

5.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule 811—5.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

811—5.14(17A,22) Personally identifiable information. The agency maintains systems of records that contain personally identifiable information. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 169. The record systems maintained by the agency are:

5.14(1) *Personnel files.* Employees of the agency are employed through the department of agriculture and land stewardship. Through the department of agriculture and land stewardship, the agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records,

biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

5.14(2) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which include judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys' notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons seeking copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court that maintains the official copy.

5.14(3) *Contested case matters.* These records are collected and maintained pursuant to Iowa Code sections 17A.3(1) "d," 17A.3(2), and 17A.12, and the Iowa Code sections noted in subrule 5.14(4). Contested case matters include all pleadings, motions, briefs, orders, transcripts, exhibits, and physical evidence utilized in the resolution of the matter, and may, unless released by the credential holder, be confidential as stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(4) *Credential records.* Under Iowa Code chapter 169, the board regulates by license veterinarians, and regulates by certificate veterinary technicians, assistants and veterinary students, and regulates by temporary permit veterinarians credentialed under Iowa Code section 169.11 and rule 811—9.1(169). Credential records include, but are not limited to, information identifying the credential holder by name or code, location, and form of business entity, including the names of corporate principals. These records may include examinations, complaints, compliance activities and investigatory reports that are confidential. These records may include confidential information protected from disclosure under Iowa Code sections 22.7, 169.6 and 272.6. These records are maintained jointly with the department of agriculture and land stewardship. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(5) *Laboratory reports.* In furtherance of licensure and certification regulation under subrule 5.14(4), the board may procure laboratory reports consisting of analytical results of samples. These records may include confidential information protected from disclosure under Iowa Code section 22.7(3), 22.7(6), or 22.7(18), as well as those provisions stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system. These records are identified by the name or code of the subject of the investigation.

811—5.15(17A,22) Other groups of records. Other groups of records are maintained by the agency other than the records defined in rule 811—5.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 811—5.13(17A,22). The records listed may contain information about individuals.

5.15(1) *Administrative records.* This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

5.15(2) *Publications.* The office receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state law library.

5.15(3) *Rulemaking records.* Rulemaking records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is available for public inspection.

5.15(4) *Board records.* Agendas, minutes, and materials prepared or maintained by the board are available from the office, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5 or that are otherwise confidential by law. Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

5.15(5) *Other records.* All other records that are not exempted from disclosure by law.

811—5.16(17A,22) Data processing systems. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

811—5.17(169,252J,272D) Release of confidential licensing information for collection purposes. Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit or with the centralized collection unit of the department of revenue through manual or automated means for the sole purpose of identifying applicants or credential holders subject to enforcement under Iowa Code chapter 252J, 598 or 272D.

These rules are intended to implement Iowa Code chapters 17A, 22, 169 and 252J.