The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay or suspension imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.
INSTRUCTIONS FOR UPDATING THE IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

**Agriculture and Land Stewardship Department[21]**
- Replace Analysis
- Remove Reserved Chapters 51 to 57
- Insert Chapter 51 and Reserved Chapters 52 to 57
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**Iowa Public Employees’ Retirement System[495]**
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- Replace Chapter 1
- Replace Chapters 3 and 4

**Veterinary Medicine Board[811]**
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- Replace Chapter 10

**Voter Registration Commission[821]**
- Replace Analysis
- Replace Chapter 8
- Replace Chapter 10
- Replace Chapter 12
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[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 7/27/88, Agriculture Department[30]]
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CHAPTER 51
FARM-TO-SCHOOL FUND

21—51.1(190A) Purpose. The purpose of the farm-to-school fund is to assist schools and school districts in purchasing food locally grown or produced by Iowa farmers to serve in school meals or as snacks. [ARC 6217C, IAB 2/23/22, effective 3/30/22]

21—51.2(190A) Definitions.
“Department” means the department of agriculture and land stewardship.
“Food product” means a perishable or nonperishable product derived from processing a food commodity to be fit for human consumption, including but not limited to cuts of meat, poultry, or fish; shelled aquatic items; pasteurized milk or dairy products; washed shelled eggs; honey; maple syrup; cleaned unshelled or shelled nuts; washed whole produce; and washed and cut produce.
“School” means a public school or nonpublic school, as those terms are defined in Iowa Code section 280.2, or that portion of a public school or nonpublic school that provides facilities for teaching any grade from kindergarten through grade 12. [ARC 6217C, IAB 2/23/22, effective 3/30/22]

21—51.3(190A) Application to participate. To participate in the farm-to-school program, schools must register with the department each school year. A school may apply to the department at any time during the school year. [ARC 6217C, IAB 2/23/22, effective 3/30/22]

21—51.4(190A) Eligible purchases.
51.4(1) Schools may be reimbursed for the purchase of a food product if either of the following applies:
   a. The food product was produced by a farm source located in this state.
   b. If the school district shares a border with another state, or the school is part of a school district that shares a border with another state, the farm source may be located in the other state. However, the farm source must be located within 30 miles of the school district’s border with the other state and the department must approve the purchase in advance.
51.4(2) Purchases must follow United States Department of Agriculture (USDA) child nutrition program procurement requirements. [ARC 6217C, IAB 2/23/22, effective 3/30/22]

21—51.5(190A) Reimbursement for purchases.
51.5(1) Participating schools or districts must submit a request for reimbursement to the department, and proof of purchase must be provided at that time.
51.5(2) The department will reimburse $1 for every $3 spent by the school or school district, up to $1,000, as funds are available. [ARC 6217C, IAB 2/23/22, effective 3/30/22]

These rules are intended to implement Iowa Code chapter 190A.
[Filed ARC 6217C (Notice ARC 6113C, IAB 12/29/21), IAB 2/23/22, effective 3/30/22]
CHAPTER 52
GRAPE AND WINE DEVELOPMENT FUNDING PROGRAM
Rescinded **ARC 1290C**, IAB 1/22/14, effective 2/26/14

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CHAPTER 57
WHITETAIL DEER HUNTING PRESERVES
Rescinded IAB 7/21/04, effective 7/2/04
CHAPTER 67
ANIMAL WELFARE
[Prior to 7/27/88 see Agriculture Department 30—Ch 20]


“Acclimated” means the animal is accustomed to a climate or environment and has the ability to maintain its body temperature.

“Adequate feed” means the provision at suitable intervals of not more than 24 hours or longer if the dietary requirements of the species so require, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. The foodstuff shall be served in a clean receptacle, dish or container.

“Adequate space” means the animals contained within the primary enclosure all must have the ability to comfortably turn about, stand erect, sit or lie with limbs fully extended.

“Adequate water” means reasonable access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval.

“Animal shelter” means a facility which is used to house or contain dogs or cats, or both, and which is owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

“Animal warden” means any person employed, contracted, or appointed by the state, municipal corporation, or any political subdivision of the state, for the purpose of aiding in the enforcement of the provisions of Iowa Code chapter 162 or any other law or ordinance relating to the licensing of animals, control of animals or seizure and impoundment of animals and includes any peace officer, animal control officer, or other employee whose duties in whole or in part include assignments which involve the seizure or taking into custody of any animal.


“Authorization” means a state license, certificate of registration, or permit issued or renewed by the department to a commercial establishment as provided in Iowa Code section 162.2A.

“Boarding kennel” means a place or establishment other than a pound or animal shelter where dogs or cats not owned by the proprietor are sheltered, fed, and watered in return for a consideration.

“Breeding male or female” means any sexually intact adult dog or cat over 12 months of age.

“Cleaning” means the mechanical removal of organic matter and waste through the application of soap, detergent or other cleaning agent followed by the rinsing of all surfaces with clean water.

“Commercial breeder” means a person, engaged in the business of breeding dogs or cats, who sells, exchanges, or leases dogs or cats in return for consideration, or who offers to do so, whether or not the animals are raised, trained, groomed, or boarded by the person. A person who owns or harbors three or fewer breeding males or females is not a commercial breeder. However, a person who breeds any number of breeding male or female greyhounds for the purposes of using them for pari-mutuel wagering at a racetrack as provided in Iowa Code chapter 99D shall be considered a commercial breeder irrespective of whether the person sells, leases, or exchanges the greyhounds for consideration or offers to do so.

“Commercial establishment” or “establishment” means an animal shelter, boarding kennel, commercial breeder, commercial kennel, dealer, pet shop, pound, public auction, or research facility.

“Commercial kennel” means a kennel which performs grooming, boarding, or training services for dogs or cats in return for a consideration.

“Commingling” means to combine animals from different owners in a common area or enclosure.

“Common area” means any area where dogs are commingled for exercise or social interaction.

“Dealer” means any person who is engaged in the business of buying for resale or selling or exchanging dogs or cats, or both, as a principal or agent, or who claims to be so engaged.

“Department” means the department of agriculture and land stewardship.
“Direct and immediate visual supervision” means a person providing visual supervision is located on the premises and within the line of sight of the animal and is available to provide immediate attention to the animals within the group.

“Distemper” means canine distemper virus or feline panleukopenia virus.

“Dog day care” means a facility licensed as a commercial kennel or a boarding kennel and designed and operated with the intention that a dog admitted to the facility is allowed, in compliance with this chapter, to mingle and interact with other dogs in one or more playgroups operating in the facility.

“Euthanasia” means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during the loss of consciousness.

“Facility” means all buildings, yards, pens and other areas, or any portion thereof, at a single location in which any animal is kept, handled, or transported for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, rescuing or otherwise transferring.

“Federal license” means a license issued by the United States Department of Agriculture to a person classified as a dealer or exhibitor pursuant to the federal Animal Welfare Act.

“Federal licensee” means a person to whom a federal license as a dealer or exhibitor is issued.

“Foster care home” means a private residence that is authorized to provide temporary shelter and care for an animal that has been accepted by a foster oversight organization.

“Foster oversight organization” means a registered animal shelter or pound or licensed dealer which has been authorized by the department to utilize foster care homes in its operation.

“Group housing” means more than two animals housed together within the same primary enclosure.

“Housing facilities” means any room, building, or area used to contain a primary enclosure or enclosures.

“Identification” means breed, color, markings, sex, and age of the dog or cat. If applicable, identification can also include a microchip number, rabies tag number, tattoo, or other similar form of identification.

“In-home facility” means an individual required to be licensed as a boarding kennel, commercial breeder, commercial kennel, or dealer who maintains or harbors animals within the individual’s residence.

“Islolation” means the separation, for the period of communicability, of infected animals from other animals in such a place and under such conditions to prevent the direct or indirect transmission of the infectious agent from those infected to those that are susceptible or that may spread the agent to others.

“Isolation facility” means the location where animals infected with disease may be placed to contain, control and limit the spread of disease.

“Kennel” means a facility, location, or area where dogs or cats are brought together or commingled for the purpose of, but not limited to, boarding, grooming, or training.

“Licensee” means any person or facility authorized to operate pursuant to Iowa Code chapter 162.

“Parvo” means canine parvovirus or feline panleukopenia virus.

“Permittee” means a commercial breeder, dealer, or public auction to whom a permit is issued by the department as a federal licensee pursuant to Iowa Code section 162.2A.

“Person” means person as defined in Iowa Code chapter 4.

“Pet shop” means an establishment where a dog, cat, rabbit, rodent, nonhuman primate, fish other than live bait, bird, or other vertebrate animal is bought, sold, exchanged, or offered for sale. However, a pet shop does not include an establishment if one of the following applies:

1. The establishment receives less than $500 from the sale or exchange of vertebrate animals during a 12-month period.

2. The establishment sells or exchanges less than six animals during a 12-month period.

“Potable water” means liquid water suitable for drinking.

“Pound” means a facility for the prevention of cruelty to animals operated by the state, a municipal corporation, or other political subdivision of the state for the purpose of impounding or harboring seized stray, homeless, abandoned, or unwanted dogs, cats, or other animals; or a facility operated for such a purpose under a contract with any municipal corporation or incorporated society.
“Primary enclosure” means any structure used to immediately restrict an animal to a limited amount of space, such as a room, pen, cage, or compartment.

“Public auction” means any place or location where dogs or cats, or both, are sold at auction to the highest bidder regardless of whether the dogs or cats are offered as individuals, as a group, or by weight.

“Registrant” means a pound, animal shelter, or research facility to whom a certificate of registration is issued by the department pursuant to Iowa Code section 162.2A.

“Rescue” means a person or group of persons, licensed as a dealer, who holds itself out as an animal rescue, or who accepts, purchases, exchanges or solicits for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs and cats or who uses foster homes as a primary means of housing dogs or cats.

“Rescue manager” means any person designated by a rescue to carry out the responsibilities of the rescue.

“Research facility” means any school or college of medicine, veterinary medicine, pharmacy, dentistry, or osteopathic medicine, or hospital, diagnostic or research laboratories, or other educational or scientific establishment situated in this state concerned with the investigation of, or instruction concerning the structure or function of living organisms, the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

“Residence” means any area or space where a person lives or resides.

“Sanitize” means to disinfect inanimate objects to eliminate as many or all pathogenic microorganisms, except bacterial spores.

“Seizure and impoundment,” as used in this chapter, means either of the following:

1. The confinement of the animals to the property of the owner or custodian of the animals with provisions being made for the care of the animals pending review and final disposition.
2. The physical removal of the animals to another facility for care pending review and final disposition.

“State fiscal year” means the fiscal year described in Iowa Code section 3.12.

“State licensee” means any of the following:

1. A boarding kennel, commercial kennel, or pet shop to whom a state license is issued by the department pursuant to Iowa Code section 162.2A.
2. A commercial breeder, dealer, or public auction to whom a state license is issued in lieu of a permit by the department pursuant to Iowa Code section 162.2A.

“Transfer” means to adopt, sell, give away, trade, barter, exchange, return or convey ownership of an animal.

“Vertebrate animal” means those vertebrate animals other than members of the equine, bovine, ovine, and porcine species, and ostriches, rheas, or emus.

“Veterinarian” means a person who is validly and currently licensed to practice veterinary medicine in the state of Iowa.

[IAC 4789C, IAB 12/4/19, effective 1/8/20; IAB 26/16/21, effective 7/21/21]

21—67.2(162) Animals included in rules. “Dog,” as that term is used in the rules, includes hybrid dog mixtures. “Animals,” as that term is used in rules relating to boarding kennels, commercial kennels, commercial breeders, dealers, public auctions, animal shelters, and pounds, means dogs and cats. “Animals,” as that term is used in rules relating to pet shops, means dogs, cats, rabbits, rodents, nonhuman primates, birds, fish other than live bait, or other vertebrate animals. This chapter does not apply to livestock as defined in Iowa Code section 717.1 or any other agricultural animal used in agricultural production as provided in Iowa Code chapter 717A.

[IAC 4789C, IAB 12/4/19, effective 1/8/20]

21—67.3(162) Housing facilities and primary enclosures.

67.3(1) Housing facilities.

a. Buildings shall be of adequate structure and maintained in good repair so as to ensure protection of animals from injury.
b. Shelter shall be provided to allow access to shade from direct sunlight and regress from exposure to wind, rain or snow. Heat, insulation, or clean and dry bedding adequate to provide comfort shall be provided when the atmospheric temperature is below 50°F or the temperature to which the particular animals are acclimated. Indoor housing facilities shall be provided for dogs and cats under the age of eight weeks and for dogs and cats within two weeks of whelping. Dogs and cats that are not acclimated to the temperatures prevalent in the area or region where they are kept and sick, aged, young or infirm dogs and cats cannot be housed in outdoor facilities.

c. Temperature.
   (1) Indoor housing facilities for dogs and cats must be capable of controlling the temperature in the housing facility and sufficiently heated and cooled when necessary to protect dogs and cats from temperature or humidity extremes and to provide for their well-being.
   (2) When dogs and cats are present, the ambient temperature in the indoor housing facility cannot fall below 50°F for dogs and cats not acclimated to lower temperatures, for breeds that cannot tolerate lower temperatures without stress or discomfort, and for sick, aged, young or infirm dogs and cats except as approved by the attending veterinarian. Heat, insulation, clean and dry bedding or other methods of conserving body heat that are adequate to provide comfort shall be provided when the atmospheric temperature is below 50°F. The ambient temperature must not fall below 45°F or rise above 85°F for more than four consecutive hours when dogs or cats are present.

d. Ventilation. Indoor and outdoor housing facilities shall at all times be provided with ventilation by means of doors, windows, vents, air conditioning or direct flow of fresh air that is adequate to provide for the good health and comfort of the animals. Such ventilation shall be environmentally provided so as to maintain adequate temperature and minimize drafts, moisture condensation, odors or stagnant vapors of excreta. Auxiliary ventilation, such as fans, blowers or air conditioning, must be provided when the ambient temperature is above 85°F. Relative humidity must be maintained at a level that ensures the health and well-being of the animals housed in the housing facility. Indoor housing facilities must be capable of the following:
   (1) Maintaining humidity levels between 30 percent and 70 percent; and
   (2) Rapidly eliminating odors from within the building.

e. Adequate lighting shall be provided by natural or artificial means, or both, during sunrise to sunset hours to allow efficient cleaning of the facilities and routine inspection of the facilities and animals contained therein.

f. Ceilings, walls and floors shall be constructed so as to lend themselves to efficient cleaning and sanitizing. Such surfaces shall be kept in good repair and maintained so that they are substantially impervious to moisture. Floors and walls to a height of four feet shall have finished surfaces. No sharp or jagged edges may be present that may injure an animal. Animal contact surfaces must be free of excessive rust that prevents required cleaning and sanitizing or that affects the structural strength of the surface or that may be detrimental to the health of the animal.

g. Food supplies and bedding materials shall be stored so as to adequately protect them from contamination or infestation by vermin or other factors which would render the food or bedding unclean. Separate storage facilities shall be used to store cleaning and sanitizing equipment and supplies.

h. Washrooms, basins or sinks for maintaining cleanliness among animal caretakers and the sanitizing of food and water utensils shall be provided within or be readily accessible to each housing facility.

i. Equipment shall be available for removal and disposal of all waste materials from housing facilities to minimize vermin infestation, odors and disease hazards. Drainage systems shall be functional to effect the above purposes.

j. Group housing is permitted for animals that are compatible with one another, except as otherwise stated herein. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed in the facility. Females in estrus shall not be housed with males except for breeding purposes.

k. Facilities shall be provided to isolate diseased animals and to prevent exposure to healthy animals.
l. Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the animal(s) therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. Grass runs and exercise areas are permissible provided that adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown. Dog runs and exercise areas utilizing wire floors are permissible provided that the wire floors are not injurious to the animals and are adequately maintained. Wire flooring cannot cause injury to any animal contained in a dog run or exercise area that has wire flooring and must:

1. Have a solid resting surface of adequate size for an animal to lay on its side;
2. Be in good repair, free of excessive rust that prevents required cleaning and sanitizing or that affects the structural strength of the surface or that may be detrimental to the health of the animal;
3. Be free of jagged or sharp edges, and constructed so as to lend itself to efficient cleaning and sanitizing; and
4. Be of a gauge and construction to prevent bending and sagging and to prevent physical harm to an animal or entrapment of the feet of an animal housed within the primary enclosure.

m. Housing facilities and areas used for storage of food or bedding must be free of trash, garbage, waste, weeds, debris and other materials potentially harmful to animals.

n. Animal areas must be kept clean, neat, and free of clutter.

o. The department may limit the number of animals allowed in any housing facility based on, but not limited to, the number of available primary enclosures, the animal care space available within a facility, or lack of available personnel to care for the animals.

67.3(2) Primary enclosures.

a. Primary enclosures shall be of sound construction and maintained in good repair to protect the animals from injury. No sharp points or jagged edges may be present that may cause injury to an animal. Animal contact surfaces must be free of excessive rust that prevents required cleaning and sanitizing or that affects the structural strength of the surface or that may be detrimental to the health of the animal. Animal contact surfaces must also be free of jagged edges, sharp points and anything that may cause injury to an animal.

b. Construction materials and maintenance shall allow the animals to be kept clean and dry. Walls and floors shall be impervious to urine and other moisture and lend themselves to efficient cleaning and sanitizing.

c. A primary enclosure shall provide for adequate space appropriate for the age, size, weight, breed, and temperament of the animal.

d. The shape and size of the enclosure shall afford adequate space for the individual animals within the enclosure. Adequate space includes, but is not limited to, allowing the animal the ability to comfortably reposition, turn about, stand erect, sit or lie while limbs are fully extended. Cats must have adequate space for a litter box so that litter does not contaminate food and water.

e. A nursing bitch or queen must be provided additional space. The amount of additional space required should be based on the breed and behavioral characteristics of the animal.

f. The department may limit the number of animals housed in a primary enclosure based on, but not limited to, the amount of available and usable floor space, personnel available to care for the animals and the compatibility of the animals within the enclosure.

g. Group housing.

1. Group housing for animal shelters, pounds, commercial breeders, pet shops, dealers, public auctions or research facilities is permitted for animals that are compatible with one another, except as otherwise stated herein. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed within the primary enclosure. No more than 12 adult dogs or cats may be housed in the same primary enclosure. Dogs and cats shall not be housed in the same primary enclosure.

2. Group housing in boarding kennels and commercial kennels is permitted only if the animals are owned by the same person and are compatible or by operating as a dog day care as required in rule 21—67.8(162).
h. Elevated resting surfaces are required for cats housed in groups of four or more. Elevated resting surfaces must be collectively large enough to simultaneously hold all occupants of a primary enclosure and must be impervious to moisture, easily cleaned and sanitized, easily replaced, and of sufficient elevation for the cats enclosed in the primary enclosure to comfortably lay under the elevated surfaces.

i. Litter boxes containing clean litter shall be provided at all times for kittens and cats. Adequate litter boxes must be provided for the number of cats within a primary enclosure. Litter boxes must:
   (1) Be cleaned at minimum once daily or more often as necessary to prevent the accumulation of animal waste;
   (2) Contain adequate litter and be of adequate size; and
   (3) Be cleaned and sanitized in a separate sink from food and water receptacles. If a separate sink is not available, then the sink must be cleaned and sanitized after the litter boxes are washed and before anything else is washed in the sink.

j. Animal waste, including used cat litter, must be removed from primary enclosures at minimum once daily or more frequently to prevent the accumulation of waste and contamination of the animals contained within the primary enclosure and must be discarded in accordance with state, county and local ordinances.

k. Means shall be provided to maintain the temperature and ventilation that are comfortable for the species within the primary enclosure. Lighting shall be adequate to allow observation of the animals, but the animals shall be protected from excessive illumination.

l. Animals shall be removed from their primary enclosures at least twice in each 24-hour period and exercised unless the primary enclosure is of sufficient size to provide for sufficient exercise. The amount of exercise should be appropriate for the age, breed, and health condition of the animal. Impounded animals, animals deemed too dangerous to be removed from the primary enclosure, and animals undergoing rabies quarantine may be exempt from removal from their primary enclosure but must be housed in a primary enclosure large enough to allow for exercise within the primary enclosure. Animals under the medical supervision of a veterinarian may be exempt in writing from exercise if exemption is deemed medically appropriate by the attending veterinarian.

m. Doghouses with tethered restraints, including but not limited to chains, cannot be used as primary enclosures for dogs but may be used for the purpose of exercise. The tethered restraint used shall be placed or attached so that it cannot become entangled with the tethered restraints of other dogs or any other objects. Such tethered restraints shall be of a type commonly used for the size of dog involved and shall be attached to the dog by means of a well-fitted collar. Such tethered restraints shall be at least three times the length of the dog as measured from the tip of the dog’s nose to the base of its tail and shall allow the dog convenient access to the doghouse.

n. Primary enclosures containing wire flooring cannot cause injury to any animal contained in the primary enclosure, and the wire flooring must:
   (1) Have a solid resting surface of adequate size for an animal to lay on its side;
   (2) Be in good repair, free of excessive rust that prevents required cleaning and sanitizing or that affects the structural strength of the surface or that may be detrimental to the health of the animal;
   (3) Be free of jagged or sharp edges, and constructed so as to lend itself to efficient cleaning and sanitizing; and
   (4) Be of a gauge and construction to prevent bending and sagging and to prevent physical harm to an animal or entrapment of the feet of an animal housed within the primary enclosure.

o. When primary enclosures are stacked, all stacked enclosures must be secured so that the upper primary enclosure(s) cannot fall in a manner which may cause injury or harm to any animal. A means to prevent urine, feces, and other debris from passing into or being discharged into the underlying primary enclosure(s) is required.

p. All enclosures must be impermeable to water and easily cleaned and sanitized.

q. Bedding within primary enclosures must be easily cleaned and sanitized or disposable.

[ARC 4789C; IAB 12/4/19, effective 1/8/20; ARC 5713C; IAB 6/16/21, effective 7/21/21]
21—67.4(162) General care and husbandry standards.

67.4(1) Feeding and watering.
   a. All species covered under Iowa Code chapter 162 shall be provided with adequate feed and adequate water.
   b. Young animals and animals under veterinary care shall be fed and given water at more frequent intervals and with specific diets as their needs dictate.
   c. Water must be provided as often as necessary for the health and comfort of the animal. The frequency of providing water should be appropriate to the species, age, condition, and size of the animal as well as the environmental conditions.
   d. Water for dogs and cats must be made available at minimum two times daily for at least one hour each time.
   e. The receptacles for food and water must be:
      (1) Readily accessible;
      (2) Located to minimize contamination with excreta;
      (3) Made of durable material that can easily be cleaned and sanitized or be disposable;
      (4) Appropriate for the species, size, age and breed of animal; and
      (5) Replaced after a single use if the receptacles are disposable.

67.4(2) Cleaning and sanitation.
   a. Housing facilities and primary enclosures shall be cleaned a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors. Dirt, hair, excreta (including but not limited to urine and feces), food waste, and other debris shall be removed from a primary enclosure daily or at a frequency to prevent their accumulation and the contamination of the animals contained within the primary enclosure.
      (1) When primary enclosures are stacked, a means to prevent urine, feces and other debris from passing into or being discharged into the underlying primary enclosure(s) is required.  
      (2) Pressure water systems or live steam may be used for cleaning if animals are removed while the cleaning takes place.
   b. Housing facilities and primary enclosures shall be sanitized at intervals not to exceed two weeks or sanitized more frequently as may be necessary to reduce disease hazards. Sanitizing shall be done by washing the surfaces with hot water and soap or detergent, followed by the application of a safe and effective disinfectant. Runs and exercise areas having gravel or other nonpermanent surface materials shall be sanitized by periodic removal of soiled materials, application of suitable disinfectants, and replacement of the soiled materials with clean surface materials. Dirt, hair, excreta, food waste, and other debris shall be removed before sanitizing begins. Manufacturer labels shall be followed for dilution and contact time for all soaps, detergents, disinfectants, or other chemicals used for sanitization.
   c. An effective program shall be established and maintained for the control of vermin infestation.
   d. Before a primary enclosure, food receptacle or water receptacle is used for another animal, the primary enclosure, food receptacle or water receptacle shall be cleaned and sanitized.

67.4(3) Veterinary care.
   a. Programs of disease prevention and control shall be established in writing and maintained.
   b. Sick, diseased or injured animals shall be provided with prompt veterinary care or disposed of by euthanasia. Euthanasia must be performed in a manner deemed acceptable by and published in the American Veterinary Medical Association Guidelines for Euthanasia of Animals: 2020 Edition.
   c. All species regulated under Iowa Code chapter 162 that are infected with contagious diseases shall be immediately placed into isolation facilities as provided for in this paragraph to prevent exposure to healthy animals. Isolation facilities must be an area separate from the remainder of the animals in a facility with the ability to contain disease and to reduce the risk of disease spread. Animals in isolation must be cared for separately from the remainder of the animals in a facility. All equipment and supplies used for animals in an isolation facility must be cleaned and disinfected prior to removal from the isolation facility or discarded in a manner that prevents disease spread.
   d. Dogs and cats within all commercial establishments must be vaccinated for rabies when age-appropriate unless exempted by Iowa Code section 351.42.
e. All dogs and cats taken into the care of a dealer, or transported into housing facilities regulated under Iowa Code chapter 162, excluding pounds and animal shelters, shall have been vaccinated against distemper, parvo and rabies, unless exempted by direct written recommendation of the owner’s veterinarian or exempted by Iowa Code section 351.42 before entering the housing facility or being taken into the care of a dealer. Rabies titers shall not be accepted by a commercial establishment in lieu of a rabies vaccination.

f. Animal shelters and pounds must vaccinate dogs and cats in their care for rabies, distemper and parvo within a reasonable time of the dog or cat entering the animal shelter or pound. Animal shelters and pounds must also keep dogs and cats current on vaccinations for rabies, distemper and parvo.

g. Vaccine titers shall not be accepted as a form of vaccine verification. Vaccine records and written vaccine exemptions shall be kept on file. Acceptable forms of documentation for vaccine verification for admittance of a dog or cat into a commercial establishment, excluding animal shelters and pounds, include the following:
   (1) Written documentation of vaccination from a veterinarian.
   (2) A rabies certificate signed by a veterinarian.

h. Dogs and cats brought into the state of Iowa must meet importation requirements under rule 21—65.10(163).

i. Commercial establishments, excluding commercial kennels and boarding kennels, shall enter into a written agreement with a veterinarian licensed by the state of Iowa to provide veterinary care for the animals maintained in the facility. The agreement shall include a requirement that the veterinarian visit the facility at least once every 12 months for the purpose of viewing all the animals in the facility, making a general determination concerning the health/disease status of the animals, and reviewing the facility’s program for disease prevention and control. If during the course of the visit the veterinarian identifies an animal that requires a more detailed individual examination to determine the specific condition of the animal or to determine an appropriate course of treatment, then such examination shall be undertaken.

j. Commercial kennels and boarding kennels must have a written agreement with a veterinarian licensed by the state of Iowa to provide veterinary care for an animal in their care should veterinary care be required.

k. If during an inspection of a facility the department finds an animal which appears to have a physical condition or disease that, in the opinion of the inspector, requires a veterinarian’s attention, the department may order that the licensee subject the animal to a veterinarian’s examination at the licensee’s expense. The department may require the licensee to submit written proof of the veterinarian’s examination and results of the examination within a time frame set by the department.

67.4(4) Personnel.

a. The owner or personnel shall be present at least once in each 24-hour period to supervise and ascertain that the care of animals and maintenance of facilities conform to all of the provisions of Iowa Code chapter 162.

b. A sufficient number of qualified personnel shall be utilized to provide the required care of animals and maintenance of facilities during normal business hours.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

21—67.5(162) Transportation.

67.5(1) Primary enclosures for transportation. Primary enclosures are required within transportation vehicles.

a. Primary enclosures utilized in transportation shall:
   (1) Be of sound construction, maintained in good repair to ensure protection of animals from injury, and readily cleaned and sanitized;
   (2) Be free of sharp points, jagged edges or protrusions that could injure the animal; and
   (3) Securely contain the animal so that the animal cannot injure itself, its handler or any persons or animals nearby.

b. Floors and lower sides shall be constructed or covered on the inner surfaces so as to contain excreta and bedding materials.
c. Adequate space shall be provided so that the animal(s) contained in the primary enclosure may comfortably turn about, stand erect, sit and lie.

d. Openings shall be provided in primary enclosures so that adequate ventilation can be maintained when the primary enclosures are positioned in the transporting vehicle.

e. Primary enclosures shall be cleaned and sanitized before each trip and between animals.

f. The temperature within primary enclosures shall not be allowed to exceed the atmospheric temperature. During transportation, the ambient temperature inside the primary enclosure cannot exceed 85°F for a period of more than four hours, nor may the temperature fall below 45°F for a period of more than four hours. Auxiliary ventilation, such as fans, blowers or air conditioning, must be used in the animal space when the ambient temperature in the space reaches 85°F.

67.5(2) Vehicles.

a. Protection shall be afforded to primary enclosures transported in the vehicle, sheltering the animals from drafts and extremes of hot or cold temperatures to which they are not acclimated.

b. Primary enclosures used in transportation shall be securely positioned in the vehicle to protect the animals from injury.

67.5(3) Care in transit.

a. Animals in transit shall be provided adequate feed and adequate water as defined in rule 21—67.1(162).

b. Incompatible animals shall not be placed together during shipment. Females in estrus shall not be placed in the same primary enclosure with a male.

c. Animals shall be inspected at least once in each four-hour period and the primary enclosures cleaned if necessary and the emergency needs of the animals attended to immediately.

d. Animals shall be removed for exercise and their enclosures cleaned if the animals have been en route for a 12-hour period.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

21—67.6(162) Purchase, sale, trade and adoption.

67.6(1) Records shall be made and retained for a period of 12 months for any change of ownership of a dog, cat or nonhuman primate, including but not limited to any sale, exchange, transfer, trade, or adoption from any commercial establishment. Records shall be similarly kept on other small vertebrate animals, excluding tropical or ornamental fish, sold or transferred, except that individual identifications shall not be required. Records shall include the following:

a. Date of change of ownership;

b. Identification of animal;

c. Names, mailing addresses, telephone numbers, and email addresses, if available, of seller and purchaser or transferor and recipient;

d. State of Iowa animal welfare license number of the seller or transferor;

e. Source of the animal;

f. Date animal entered the care of and left the care of the commercial establishment;

g. Method and date of euthanasia, if applicable;

h. Transfer of animal within or between commercial establishments;

i. List of prophylactic immunization(s) given, including date(s) administered (if applicable);

j. List of internal parasite medication(s) given and date(s) administered (if applicable); and

k. Description of other medical care provided to the animal, including type of medical care received and date(s) of medical care.

67.6(2) All commercial establishments shall furnish a statement of sale, exchange, transfer, trade, or adoption to each purchaser or recipient of a dog, cat, nonhuman primate, bird, or other vertebrate animal, excluding tropical or ornamental fish. This statement shall include the following:

a. Names, mailing addresses, telephone numbers, and email addresses, if available, of the seller or transferor and the purchaser or recipient;

b. State of Iowa animal welfare license number of the seller or transferor;

c. Date of sale, transfer, trade, adoption, exchange or any other change of ownership;
d. Description or identification of vertebrate sold;

e. List of prophylactic immunization(s) given, including date(s) administered (if applicable);

f. List of internal parasite medication(s) given and date(s) administered (if applicable); and

g. Description of other medical care provided to the animal, including type of medical care received and date(s) of medical care.

67.6(3) All vertebrate animals regulated under Iowa Code chapter 162 which are known to be exposed to or show symptoms of having infectious and contagious diseases or which show symptoms of parasitism or malnutrition sufficient to adversely affect the health of the animals are restricted from sale or transfer. The secretary of agriculture may order quarantine on premises or housing facilities in which any of the conditions listed in this subrule exist. Quarantine shall be removed when at the discretion of the secretary or the secretary’s designee, the disease conditions for which quarantined are no longer evident and the apparent health of the animals indicates absence of contagion.

67.6(4) For the purposes of determining an individual’s obligation to be licensed under Iowa Code section 162.8, “breeding animal” includes any sexually intact animal over the age of 12 months.

[ARC 4789C; IAB 12/4/19, effective 1/8/20; ARC 6213C; IAB 2/23/22, effective 3/30/22]

21—67.7(162) Boarding kennels, commercial kennels, animal shelters, pounds and dealers.

67.7(1) Boarding kennels and commercial kennels.

a. Records shall be made and retained for a period of 12 months for each animal boarded, groomed or trained. Records shall include the following:

1. Owner’s name, address, telephone number and email address;

2. Identification of animal;

3. Duration of animal’s stay;

4. Service(s) provided;

5. Any illnesses which have occurred and veterinary treatment the animal received; and

6. Written documentation of the animal’s vaccinations or vaccination exemptions from a veterinarian.

b. All dogs and cats transported into boarding kennels and commercial kennels regulated under Iowa Code chapter 162 shall have been vaccinated against distemper, parvo and rabies, unless exempted by Iowa Code section 351.42 or the direct written recommendation of a qualified veterinarian. Vaccine records and exemptions must be kept on file for a period of 12 months for each animal boarded, groomed, or trained.

c. Vaccine titers shall not be accepted as a form of vaccine verification. Vaccine records and written vaccine exemptions shall be kept on file. Acceptable forms of documentation for vaccine verification include the following:

1. Written documentation of vaccination from a veterinarian;

2. A rabies certificate signed by a veterinarian.

d. Animals exhibiting symptoms of disease shall be promptly examined and treated by a veterinarian.

e. Group housing is permitted only if the animals are owned by the same person and are compatible or by operating as a dog day care as required in rule 21—67.8(162).

f. Grooming and training utensils and equipment shall be cleaned and sanitized between use on animals owned by different persons.

g. Primary enclosures shall be cleaned and sanitized between use in containing animals owned by different persons. Primary enclosures must be cleaned at least once daily and sanitized weekly for animals staying overnight.

h. Primary enclosures shall utilize latches that cannot be inadvertently opened or shall be equipped with some form of locking device so as to prevent the accidental release of the animal contained in the primary enclosure.

67.7(2) Animal shelters and pounds.
a. Dogs, cats and other vertebrates upon which euthanasia may be permitted by law shall be destroyed only by euthanasia in a manner deemed acceptable by and published in the American Veterinary Medical Association Guidelines for Euthanasia of Animals: 2020 Edition.

b. Animal shelters and pounds shall develop and implement a plan providing for the surgical sterilization of all dogs and cats released, unless exempted from this provision in accordance with Iowa Code section 162.20(5).

c. Sterilization agreements shall contain the following:
   (1) The name, address and signature of the person receiving custody of the dog or cat.
   (2) A complete description of the animal, including any identification.
   (3) The signature of the representative of the pound or animal shelter.
   (4) The date that the agreement is executed and the date by which sterilization must be completed.
   (5) A statement which states the following:
      1. Sterilization of the animal is required pursuant to Iowa Code section 162.20.
      2. Ownership of the dog or cat is conditioned upon the satisfaction of the terms of the agreement.
      3. Failure to satisfy the terms of the agreement constitutes a breach of contract, requiring the return of the dog or cat.
   4. A person failing to satisfy the sterilization provisions of the agreement is guilty of a simple misdemeanor.

d. In addition to maintaining the records required by subrule 67.6(1), animal shelters and pounds shall maintain, for a period of 12 months, the following records:
   (1) Euthanasia records, including date of entry, source of animal, and date of euthanasia.
   (2) Sterilization agreements, including confirmation in the form of a receipt furnished by the office of the attending veterinarian.
   (3) Disposition records of all animals lawfully claimed by owners, research facilities, or Class B federal dealers.

e. A pound or animal shelter may apply in writing for an enforcement waiver pursuant to Iowa Code section 162.20(5) “b.” The application shall include the specific guidelines under which the waiver is being requested and a certified copy of the ordinance providing the basis for the waiver application. A waiver application fee of $10 shall accompany the application.

f. A pound or animal shelter shall be subject to civil penalties as provided in Iowa Code section 162.20(3) “c” for not procuring and maintaining required records documenting compliance with the sterilization agreement, successfully seeking return of the animal from a noncompliant custodian, failing to effect a sterilization agreement when required for an animal which is released, or seeking legal recourse as provided in Iowa Code section 162.20(4). The pound or animal shelter shall be entitled to appeal pursuant to Iowa Code chapter 17A.

67.7(3) Dealers.

a. A dealer license is required to operate as a dealer in Iowa. This requirement applies to residents and nonresidents of Iowa, including dealer foster homes in Iowa.

b. All dogs and cats taken in by or in the possession of a dealer must be vaccinated and kept current against distemper, parvo and rabies, unless exempted by Iowa Code section 351.42 or the direct written recommendation of a qualified veterinarian. A signed rabies certificate or other written documentation from a veterinarian is required to verify vaccination compliance. Vaccine titers are not sufficient for demonstrating vaccine compliance. Dealers must provide vaccine records or exemptions to the department upon request.

c. Dogs and cats brought into the state of Iowa must meet the importation requirements stated in rule 21—65.10(163).

d. A dealer with housing facilities must meet the requirements provided for housing facilities and primary enclosures in rule 21—67.3(162) and in-home facilities in rule 21—67.9(162).

e. A dealer must maintain records and statement of sales as provided for in rule 21—67.6(162).

f. A dealer approved by the department to act as a fostering oversight organization must meet the requirements for fostering oversight organizations and foster care homes provided in rule
21—67.11(162). A dealer may not utilize or oversee a foster home without prior written authorization of the department.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

21—67.8(162) Dog day cares.

67.8(1) Purpose. The purpose of a dog day care is to allow dogs participating in the day care to become socialized through interaction in playgroups with other compatible dogs.

67.8(2) Subclassification of license. Dog day cares can operate as a subclassification of a commercial kennel license or boarding kennel license by complying with rule 21—67.8(162).

67.8(3) Approval based on number of dogs. The department will approve a dog day care for a maximum number of dogs based on, but not limited to, available space, available staff, and staff’s ability to supervise dogs.

67.8(4) Facility requirements. A facility licensed to be a dog day care shall meet the housing facility and primary enclosure requirements provided for in rule 21—67.3(162). The dog day care shall also comply with the following facility requirements:

a. Group interaction is permitted for dogs, including dogs owned by different owners, that are compatible with one another. A facility licensed as a dog day care shall comply with all requirements in this rule during all hours of operation.

b. The play area for dogs shall provide for a minimum of 50 square feet per dog. Play areas must have a sign placed at the entry of the play area stating the maximum number of dogs allowed in the play area at any one time.

c. Each dog attending a dog day care must have a primary enclosure. When not under direct supervision, dogs at a dog day care must be housed within a primary enclosure at all times. Group housing within a primary enclosure is permitted for dogs from the same household that are compatible with one another.

67.8(5) Sanitation requirements. A facility licensed to be a dog day care shall comply with the cleaning and sanitation standards provided for in rule 21—67.4(162) and the following requirements:

a. All areas to which a dog has access shall be cleaned and sanitized a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors.

b. Used primary enclosures and food and water receptacles must be cleaned and sanitized before they can be used to house, feed or water another animal.

67.8(6) Operations. A facility licensed to be a dog day care shall comply with the following operational standards:

a. A dog, including a dog owned by the dog day care owner or a dog day care employee, shall be admitted into a dog day care only after the day care has:

   (1) Subjected the dog to a pre-entry screening process that adequately evaluates the temperament of the dog, the dog’s ability to interact with other dogs in a positive manner, and the dog’s ability to interact with humans in a positive manner. The screening shall include, but not be limited to, obtaining a social history of the dog from the dog’s owner. A written record of the testing shall be maintained by the facility for the time the dog is enrolled in the day care. The day care shall not admit any dog into the day care if the dog has a predisposition to be possessive of either the facility or a person owning or working in the facility. The day care shall not admit any dog that is known to have a predisposition of aggression toward other dogs or people.

   (2) Obtained from the dog’s owner written documentation of the medical history of the dog, including the dog’s current vaccination status against distemper, parvo and rabies, unless exempted by direct, written recommendation of the owner’s veterinarian or exempted by Iowa Code section 351.42.

   (3) Obtained written documentation that the dog has been spayed or neutered, if the dog is over six months of age.

   (4) Obtained a written acknowledgment from the dog’s owner that the owner understands the inherent risk of injury or disease when dogs owned by different people are allowed to commingle. This written acknowledgment shall be separately signed or initialed by the dog’s owner.
b. The dog day care shall separate dogs in the dog day care into playgroups comprised of compatible dogs. Dogs of incompatible personalities or temperaments shall be maintained separately.

c. The dog day care shall make advance arrangements in writing with a veterinarian to provide emergency veterinary care for dogs at the dog day care. This agreement must be updated annually.

d. A sick, diseased or injured dog shall be immediately removed from the playgroup and isolated. If circumstances indicate that immediate veterinary care is required, the dog shall be taken to a veterinarian or a veterinarian shall be called to examine the dog. The veterinarian can be either a veterinarian whose services have been contracted for by the dog day care or the veterinarian designated by the dog’s owner, if a timely examination by that veterinarian is feasible.

e. The feeding of a dog and giving of snacks to a dog shall only be provided when the dog receiving the food or snack is contained within a primary enclosure. Treats for the purpose of training or managing a group of dogs are permissible.

f. A dog day care shall not establish a playgroup composed of more than 30 dogs.

g. A dog day care shall employ sufficient staffing so that there is a minimum of one person assigned to each playgroup with 15 or fewer dogs and two people assigned to each playgroup with 16 to 30 dogs. The person(s) supervising a playgroup must provide direct and immediate visual supervision at all times.

h. At all times, a dog day care must ensure that dogs are safe within the dog day care group.

i. Rest time within a primary enclosure must be provided for a minimum of two hours per day.

Direct supervision is not required while dogs are housed within primary enclosures. 

[ARC 4789C, IAB 12/4/19, effective 1/8/20; see Delay note at end of chapter; ARC 5713C, IAB 6/16/21, effective 7/21/21]

21—67.9(162) In-home facilities.

67.9(1) Maximum number of animals. An in-home facility may not maintain or harbor more than six adult animals, including both breeding dogs or cats and surgically sterilized dogs or cats, in the individual’s residence.

67.9(2) Standards. Notwithstanding subrules 67.4(1) and 67.4(2), an in-home facility shall comply with the following standards:

a. Food supplies and bedding shall be stored so as to adequately protect them from contamination or infestation by vermin or other factors which would render the food or bedding unclean. Separate storage facilities shall be used to store cleaning and sanitizing equipment and supplies.

b. Adequate lighting shall be provided by natural or artificial means, or both, during sunrise to sunset hours. Animals shall be protected from excessive illumination.

c. The building shall be of adequate structure and maintained in good repair so as to ensure protection of animals from injury.

d. Facilities shall be available to isolate diseased animals to prevent exposure to healthy animals.

e. Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the animal(s) therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. Grass runs and exercise areas are permissible provided that adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown.

f. Group housing is permitted for animals that are compatible with one another. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed within the facility. Females in estrus shall not be housed with males, except for breeding purposes.

g. Every animal in an in-home facility must have a designated primary enclosure.

h. Litter boxes containing clean litter shall be provided at all times for kittens and cats. Litter boxes must be maintained as provided for in paragraph 67.3(2) "j."

i. Means shall be provided to maintain the temperature and ventilation that are comfortable for the species at all times.

j. Animals shall be removed from their primary enclosures at least twice in each 24-hour period and exercised. The amount of exercise should be appropriate for the age, breed and health condition of the animal.
k. Housing facilities shall be cleaned as set out in subrule 67.4(2) to reduce disease hazards, and an effective program shall be established and maintained for the control of vermin infestation. All surfaces within the in-home facility must be readily cleaned and maintained in good repair.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

21—67.10(162) Rescues.

67.10(1) Rescue manager. A rescue must designate a rescue manager to carry out the responsibilities of the rescue. The responsibilities of a rescue manager include, but are not limited to, the following:

a. Establishing criteria for approving foster homes;

b. Approving foster homes;

c. Supervising dogs and cats taken into the care of the rescue;

d. Monitoring and ensuring all foster homes under the rescue’s oversight are providing proper care and compliance with relevant laws and rules; and

e. Maintaining rescue records. Such records shall include, but are not limited to, the following:

(1) Source of the dog or cat;
(2) Date of placement of the dog or cat into a foster home;
(3) Adoption records;
(4) Disposition of dog or cat (if applicable);
(5) Medical care received by the dog or cat; and
(6) Vaccination and deworming records.

67.10(2) Records. Rescue records must be made available to the department upon request. A rescue must maintain records and statement of the sale, exchange, transfer, trade or adoption as provided for in rule 21—67.6(162).

67.10(3) Vaccine requirements. All dogs and cats taken in by or in the possession of a rescue shall have been vaccinated against distemper, parvo and rabies and kept current on distemper, parvo and rabies vaccinations, unless exempted by Iowa Code section 351.42 or by direct written recommendation of a qualified veterinarian. A signed rabies certificate and written documentation of parvo and distemper vaccinations from a veterinarian are required to verify vaccination. Titors are not an acceptable form of vaccine verification. Titer results are not sufficient for demonstrating vaccine compliance. Dealers must provide vaccine records or written exemptions to the department upon request.

67.10(4) Importation requirements. Dogs and cats brought into the state of Iowa must meet the importation requirements stated in rule 21—65.10(163).

67.10(5) Housing facilities and primary enclosures. A rescue with housing facilities must meet the requirements for housing facilities and primary enclosures in rule 21—67.3(162). Rescues operating as in-home facilities must meet the requirements in rule 21—67.9(162).

67.10(6) Foster care homes. A rescue approved by the department to act as a foster oversight organization must meet the requirements for foster oversight organizations and foster care homes provided in rule 21—67.11(162). A dealer may not utilize or oversee a foster care home without prior written authorization of the department.

67.10(7) General care and husbandry. A rescue must meet the general care and husbandry standards provided for in rule 21—67.4(162).

67.10(8) Transportation. A rescue transporting animals must meet the requirements provided in rule 21—67.5(162).

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

21—67.11(162) Foster oversight organizations and foster care homes.

67.11(1) A registered animal shelter, registered pound or licensed dealer shall not operate a foster care home or operate an organization that utilizes a foster care home unless the shelter, pound or dealer is in compliance with this rule and other applicable provisions of this chapter and Iowa Code chapter 162. If an out-of-state organization is utilizing foster care homes in Iowa, that organization must also be licensed or registered in the state of Iowa as an animal shelter, pound or dealer.

67.11(2) A registered animal shelter, registered pound or licensed dealer may apply to the department for a permit authorizing the shelter, pound or dealer to utilize one or more foster care homes in carrying
out its mission of providing for the care and maintenance of an animal that has been taken in or entrusted to the animal shelter, pound or dealer. For purposes of this rule, an animal shelter, pound or dealer that has been granted such authorization shall be considered a foster oversight organization.

67.11(3) A registered animal shelter, registered pound or licensed dealer may not utilize a foster care home unless the shelter, pound or dealer has been granted authorization by the department to be a foster oversight organization. An animal shelter, pound or dealer that uses a foster care home without first obtaining a permit authorizing the shelter, pound or dealer to be a foster oversight organization shall be considered to be operating illegally, shall be subject to suspension or revocation of its license to operate, and may be subject to other penalties authorized in Iowa Code chapter 162.

67.11(4) A registered animal shelter, registered pound or licensed dealer seeking to obtain a permit to be a foster oversight organization shall make application to the department on a form prescribed by the department. When feasible, the application shall be submitted to the department at the same time that the registered animal shelter, registered pound or licensed dealer submits its certificate of registration renewal or license renewal application. The permit application shall provide sufficient information to allow the department to determine the ability of the proposed foster oversight organization to provide adequate screening and oversight of any foster care home operating under the authority of the foster oversight organization.

a. Such application shall include, but not be limited to, the following information:

1. The proposed foster oversight organization’s plan for providing oversight of the foster care home. The plan shall include the frequency of inspections of the foster care home by the foster oversight organization and the criteria to be used by the foster oversight organization in reviewing the foster care home during periodic inspections. The plan shall also include the actions to be taken by the foster oversight organization in the event that the foster oversight organization determines that the foster care home is not adequately providing for the animals in the foster care home. Foster oversight organizations shall inspect foster care homes annually, at minimum, and an annual written inspection report must be on file with the foster oversight organization. Annual inspection reports shall be retained for a minimum of two years.

2. The name, mailing address, email address and telephone number of the staff person connected with the proposed foster oversight organization who will have primary responsibility for administering the proposed foster care program.

3. The name, mailing address, email address and telephone number of a secondary staff person connected with the proposed foster oversight organization who will have responsibility for administering the proposed foster care program in the absence of the primary administrator.

4. The number of foster care homes the foster oversight organization is applying for and currently oversees. During the first year of application, the foster oversight organization will be limited to a maximum of 20 foster care homes. Upon renewal of the foster oversight organization permit, the foster oversight organization may apply for more than 20 foster care homes, subject to the approval of the department.

5. Copies of all forms utilized by the foster oversight organization. This includes, but is not limited to, inspection forms and applications.

6. The number of paid employees, both full-time and part-time, working for the foster oversight organization, the number of volunteers serving the foster oversight organization, and the number of volunteer hours utilized per week.

7. The criteria used to determine if a foster care home is capable of caring for an animal.

8. The actions taken by the foster oversight organization if the foster care home is unable to care for an animal.

b. If the foster oversight organization changes locations, a new application must be submitted.

c. If the primary or secondary contact listed on the application is no longer associated with the foster oversight organization, the department must be notified and provided with the name, mailing address, email address and telephone number of the staff person administering the foster care program.
d. The foster oversight organization must provide documentation to demonstrate that the foster oversight organization has sufficient infrastructure to adequately supervise all foster care homes and the care of the animals within the foster care homes.

67.11(5) The initial approval of a foster oversight organization shall be in effect only until the next expiration date of the registered animal shelter’s, registered pound’s, or licensed dealer’s license. Thereafter, a foster oversight organization permit renewal shall be concurrent with the facility’s certificate of registration or license renewal, unless circumstances otherwise require.

Foster oversight agreements must be renewed yearly at the same time that the registered animal shelter, registered pound, or licensed dealer submits its certificate of registration renewal application. The renewal agreement must contain the number of foster care homes for which the animal shelter or pound is requesting approval.

67.11(6) A foster oversight organization shall require that all persons seeking to operate a foster care home under the foster oversight organization submit a written application to the foster oversight organization specifying the proposed foster care home’s qualifications, including but not limited to the ability of the foster care home to provide adequate care, exercise, feed, water, shelter, space, and veterinary care.

67.11(7) A foster oversight organization shall not be authorized to approve more than 20 foster care homes during the first year of operation. In granting a permit to a foster oversight organization, the department may further restrict the number of foster care homes a particular foster oversight organization may utilize if the department determines that the foster oversight organization does not have adequate personnel to supervise the number of foster care homes for which authorization was sought or the adequate ability to care for all animals in foster care. The department may authorize the foster oversight organization to approve more than 20 foster care homes only if the department finds that the foster oversight organization has and maintains adequate personnel assigned to provide sufficient oversight of foster care homes.

67.11(8) A foster oversight organization shall not authorize a foster care home to have in its care more than six animals, including animals owned by the foster care home, with the exception of a litter of puppies or kittens under 16 weeks of age. A litter of puppies or kittens under 16 weeks of age is considered the equivalent of one dog or cat. The mother of the litter of puppies or kittens is considered one dog or cat. No more than two litters of puppies or kittens under 16 weeks of age may be in a foster home at any given point in time.

67.11(9) A person who has been found to have engaged in or participated in an act constituting animal abandonment, neglect, cruelty, or abuse shall not be authorized to operate a foster care home. In addition, if a person has had a license or permit issued under Iowa Code chapter 162 or under the United States Department of Agriculture’s animal care program revoked or has surrendered that person’s license in lieu of revocation, then that person shall not be authorized to operate a foster care home.

67.11(10) A foster oversight organization shall not place a sexually intact animal in a foster care home where there is a sexually intact animal of the opposite sex of the same species unless the foster oversight organization determines that the fostered animal is too young to breed. If the foster oversight organization determines that a sexually intact animal may be placed in a foster care home with another sexually intact animal of the opposite sex of the same species because the fostered animal is too young to breed, then the foster oversight organization shall monitor the physical development of the fostered animal to either remove the animal before it is capable of breeding or to neuter or spay the fostered animal.

67.11(11) The foster oversight organization shall retain a copy of all the following documents for a period of 24 months and shall make such documents available for inspection by the department during regular business hours:

a. Applications to operate a foster care home, including any written approvals, conditional approvals, or denials.

b. Inspections or other reports relating to the operation of a foster care home. Inspection forms must be kept on file for each foster home. Inspections of a foster care home must be conducted by the foster oversight organization at minimum yearly.
c. Any written complaints or notes written by staff of the foster oversight organization relating to
an oral complaint against a foster care home.

d. Any documents relating to the investigation or other resolution of a complaint regarding a foster
care home.

e. Any documents relating to the revocation or suspension of a foster care home’s authorization.

f. A current list of animals in foster care homes.

67.11(12) The foster oversight organization shall maintain detailed records as to which animals have
been placed in a foster care home, when each animal was placed in a foster care home, and the ultimate
disposition of each animal.

67.11(13) All adoptions and euthanasias of animals placed in a foster care home shall be the
responsibility of the foster oversight organization and shall not be performed by the foster care home
unless an emergency euthanasia must be performed by a licensed veterinarian to prevent the needless
suffering of the animal.

67.11(14) All deaths, injuries, or emergency euthanasias occurring within a foster care home shall
be reported to the foster oversight organization within 24 hours of the event.

67.11(15) It is the primary responsibility of the foster oversight organization to provide for oversight
and regulation of its foster care homes; however, the department may choose to inspect a foster care
home if the department determines that it would be in the best interests of the animals being maintained
in the foster care home to conduct the inspection or if the department deems an inspection desirable to
determine whether a foster oversight organization is properly fulfilling its role of screening and oversight
of foster care homes. If the department determines that either serious or chronic problems exist in
a foster care home, the department may order the foster oversight organization to suspend or rescind
the authorization of the foster care home. The foster oversight organization shall immediately obtain
physical examinations of all animals previously placed in the foster care home.

67.11(16) If the department determines that a foster oversight organization is not providing adequate
screening or oversight of its foster care homes, the department may suspend or rescind the foster oversight
organization’s authorization to use foster care homes.

67.11(17) If the department suspends or revokes the license of an animal shelter, pound or dealer
that is also a foster oversight organization, then the authorization to operate of the foster oversight
organization and that of the foster care homes operating under the foster oversight organization shall
immediately cease.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

21—67.12(162) Public health.

67.12(1) Animal wardens aiding in the enforcement of the provisions of Iowa Code chapter 162
shall enlist veterinary aid in programming control measures to protect the public from zoonotic diseases
which may be suspected to be on the premises of a licensee or registrant.

67.12(2) Animals, housing facilities, or premises may be placed under quarantine by order of the
secretary of agriculture when it is deemed necessary to protect the public from zoonotic diseases.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

21—67.13(162) Access, seizure and impoundment.

67.13(1) Access to facilities and records. The premises, housing facilities and records required by
Iowa Code chapter 162 and this chapter shall be open for inspection by authorized personnel of the
department during normal business hours.

67.13(2) Seizure and impoundment.

a. Failure of any pound, animal shelter, pet shop, boarding kennel, commercial kennel,
commercial breeder, public auction or dealer to adequately house, feed, water or care for the animals in
the person’s or facility’s possession or custody may subject the animals to seizure and impoundment.
Seize and impoundment shall be at the discretion of the secretary of agriculture. Standards to guide
discretion shall include, but not be limited to, the following:
(1) An assessment of the condition of the animals, including but not limited to direct visual examination. Such assessment may include procedures and testing necessary to accurately determine disease, nutritional, and health status.

(2) An assessment as to the likelihood that the condition of the animals will deteriorate if action is not taken.

(3) An assessment as to the degree of failure to provide for the animals. Primary consideration will be based on the general health of the animals and the adequacy with which the animals are being fed, watered and sheltered.

(4) An assessment as to the history, if any, of the facility’s compliance, noncompliance, and willingness to take corrective action. Such an assessment will be based on past inspection reports completed by regulatory personnel from the appropriate licensing agency.

(5) Court determination, if any, as to the existence of cruelty, abuse or neglect under Iowa Code chapter 717B.

(6) The willingness of the facility to allow frequent monitoring and the ability of the department or local law enforcement officers to provide this service.

(7) A determination as to whether adequate impoundment facilities or resources exist and are available for use by the department for the seizure and impoundment of animals.

b. In proceeding under this subrule, the department may either:

(1) Petition the court in the county where the facility is located for an ex parte court order authorizing seizure and impoundment, either separately or as part of an action commenced pursuant to Iowa Code chapter 717B. The petition shall request an expedited hearing within seven days of the order for seizure and impoundment. The expedited hearing shall determine final disposition of the animals seized and impounded.

(2) Issue an administrative order authorizing seizure and impoundment. The order shall state the finding of facts on which issuance of the order was based. The order shall be personally served upon the owner or manager of the facility. If the owner or manager cannot be found after a reasonable effort to locate, the notice shall be posted conspicuously at the facility. The notice shall state the time and place of an administrative hearing to determine the appropriateness of the seizure and impoundment; and if such seizure and impoundment is upheld, then the hearing shall determine final disposition of the animals seized and impounded.

The administrative hearing shall be held within three days of the seizure unless a continuance is agreed upon by the department and the owner. A decision at the administrative hearing will not be stayed by the department for more than 48 hours pending appeal without a court order. However, the department may delay the disposition if the department determines the delay is desirable for the orderly disposition of the animals. Unless otherwise provided in this subrule, the department will follow adopted departmental rules on the conduct of the administrative hearing.

c. The release of animals for final disposition to the department will allow for the sale, adoption or euthanasia of the animals. Determination of the most appropriate option for final disposition of a specific animal shall reside with the department and be based on, but not limited to, the animal’s physical health, the presence of any condition which would necessitate treatment of significant duration or expense, and the appropriateness of the animal as a pet. All due consideration shall be given to the sale or adoption of an animal as the preferable option of disposition.

d. Any moneys generated from the sale or adoption of animals shall be used to provide compensation for the cost of care of the animals while impounded or the cost of disposition. Any residual moneys shall be directed to the owner. If the moneys generated from the sale and adoption of the animals are insufficient to meet the costs incurred in caring for the animals, the difference may be recovered in an action against the owner of the animals.

e. The department may arrange for impoundment services, including final disposition, with any licensed facility able to adequately provide for the care and disposition of the animals. Animals for which an order is issued authorizing seizure and impoundment shall be individually identified and records maintained relating to their care and final disposition. The department, or its representatives, shall be allowed access during normal business hours to the records and impounded animals.
In lieu of seizure and impoundment, the secretary of agriculture may authorize a one-time dispersal of animals, including by sale, as a remedial option. The owner may petition the department in writing for full or partial dispersal. The petition shall address the terms and conditions for dispersal which are being requested. The department may require additional terms and conditions. The terms and conditions governing dispersal will be contingent upon department approval. Such approval shall be in writing.

Conditions of this subrule and subrule 67.13(1) and Iowa Code sections 162.13 and 162.14 shall likewise apply to all eligible licensees and registrants, whether or not they have been properly licensed by Iowa Code chapter 162.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

**21—67.14(162) Loss of license or denial of license.**

67.14(1) If the license of a licensee is revoked or is relinquished by the licensee while a revocation action is pending, the licensee shall not be eligible to reapply for a new license for at least three years from the date of the revocation or relinquishment. If a licensee has been found in court to have committed an act of animal cruelty or neglect, the licensee shall not be eligible for a new license for at least five years from the date of the revocation or relinquishment. If an applicant has been found in court to have committed an act of animal cruelty or neglect, the applicant shall not be eligible for a license for at least five years from the date of the conviction or guilty plea. The prohibition against relicensure or licensure in this subrule shall include any partnership, firm, corporation, or other legal entity in which the person has a substantial interest, financial or otherwise, and any person who has been or is an officer, agent or employee of the licensee if the person was responsible for or participated in the violation upon which the revocation or conviction was based. The department may waive the three-year bar to relicensure arising from a revocation or relinquishment of a license where a revocation action was pending. Such waiver shall be made on a case-by-case basis. Such waiver shall only be given if the department finds that the conditions which resulted in the revocation or revocation action have been addressed and there is little likelihood that they will be replicated.

67.14(2) If the license of a licensee is revoked or if the license is voluntarily relinquished by the licensee, the licensee shall file with the department a written plan detailing the numbers and types of animals in its facilities and how these animals are going to be legally disposed of to ensure that the animals are being humanely handled and to ensure that the remaining animals are being maintained properly. The licensee shall submit this plan to the department no later than ten calendar days from the date of revocation or relinquishment of the license.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

**21—67.15(162) Applicability to commercial establishments with federal licenses.** In addition to obtaining the permit from the department, any person who operates a commercial establishment under a current and valid federal license shall provide care ensuring adequate feed, water, and housing facilities and appropriate sanitary control, grooming practices and veterinary care. The department has the authority to inspect the premises and the required records.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

**21—67.16(162) Acceptable forms of euthanasia.** The euthanasia of all animals kept in facilities regulated under Iowa Code chapter 162 and these rules shall be performed in a manner deemed acceptable by and published in the American Veterinary Medical Association Guidelines for Euthanasia of Animals: 2020 Edition. A copy of this report is on file with the department.

[ARC 4789C, IAB 12/4/19, effective 1/8/20; ARC 5713C, IAB 6/16/21, effective 7/21/21]

**21—67.17(162) Greyhound breeder or farm fee.** A person who owns, keeps, breeds, or transports a greyhound dog for pari-mutuel wagering at a racetrack as provided in Iowa Code chapter 99D shall pay a fee of $40 for the issuance or renewal of a state license.

[ARC 4789C, IAB 12/4/19, effective 1/8/20]

These rules are intended to implement Iowa Code chapter 162.

[Filed 12/9/74]
January 8, 2020, effective date of paragraph 67.8(4)“b” delayed until the adjournment of 2020 session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 10, 2019.
CHAPTER 85
WEIGHTS AND MEASURES
[Appeared as Ch 14, 1973 IDR]
[Certain rules renumbered 5/3/78]
All tolerances and specifications for the weights and measures division were adopted from the
[Prior to 7/27/88 see Agriculture Department 30—Ch 53]

WEIGHTS

21—85.1(215) “Sensibility reciprocal” defined. The term “sensibility reciprocal” is defined as to the
weight required to move the position of equilibrium of the beam, pan, pointer or other indicating device
of a scale, a definite amount.
This rule is intended to implement Iowa Code section 215.18.

21—85.2 to 85.4 Reserved.

21—85.5(215) “Counter scale” defined. A “counter scale” is a scale of any type which is especially
adopted on account of its compactness, light weight, moderate capacity and arrangements of parts for
use upon a counter, bench, or table.
This rule is intended to implement Iowa Code section 215.18.
[ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.6(215) “Spring and computing scales” defined. A “spring scale” is a scale in which the weight
indications depend upon the change of shape or dimensions of an elastic body or system of such bodies.
85.6(1) A “computing scale” is a scale which, in addition to indicating the weight, indicates the
total price of the amount of commodity weighed for a series of unit prices and must be correct in both
its weight and value indications.
85.6(2) All computing scales shall be equipped with weight indicators and charts on both the dealer’s
and customer’s sides.
85.6(3) Tolerances for both the spring scale and the computing scale shall not be greater than that
for counter scales.
This rule is intended to implement Iowa Code section 215.18.

21—85.7(215) “Automatic grain scale” defined. The “automatic grain scale” is one so constructed
with a mechanical device that a stream of grain flowing into its hopper can be checked at any given
weight, long enough to register said weight and dump the load. The garner above the scale should have
at least three times the capacity of the scale to ensure a steady flow at all times.
On automatic-indicating scales. On a particular scale, the maintenance tolerances applied shall be
the weight of the minimum reading-face graduation; the acceptance tolerances
applied shall be not smaller than one-fourth the value of the minimum reading-face graduation.
However, on a prepacking scale (see D.11, D.12) having graduated intervals of less than one-half
ounce, the maintenance tolerances shall not be smaller than one-eighth ounce and the acceptance
 tolerances applied shall be not smaller than one-sixteenth ounce.
This rule is intended to implement Iowa Code section 215.18.

21—85.8(215) “Motor truck scales” defined. “Motor truck scales” are scales built by the manufacturer
for the use of weighing commodities transported by motor truck.
This rule is intended to implement Iowa Code section 215.18.

21—85.9(215) “Livestock scales” defined. “Livestock scales” are scales which are constructed with
stock racks, or scales which are being used to weigh livestock.
This rule is intended to implement Iowa Code section 215.18.
21—85.10(215) “Grain dump scales” defined. “Grain dump scales” are scales so constructed that the truck may be unloaded without being moved from the scale platform.

The above-mentioned scales must be approved by the department. This approval being based upon blueprints and specifications submitted for this purpose.

This rule is intended to implement Iowa Code section 215.18.

21—85.11(215) Scale pit.

85.11(1) In the construction of a scale pit, walls must be of reinforced concrete. A slab floor must be installed in the pit. The floor must be at least 12 inches thick with a minimum of grade 40 reinforcement rod running into all piers and sidewalls, installed according to the manufacturer’s specifications. There shall be an approach at each end of the scale of not less than ten feet, and said approach shall be of reinforced concrete 12 inches thick on a level with the scale deck. A slope of a one-inch drop across the ten-foot span may be allowed for drainage.

85.11(2) Electronic scales shall have a vertical clearance of not less than four feet from the floor line to the bottom of the I-beam of the scale bridge, thus providing adequate access for inspection and maintenance. The load-bearing supports of all scales installed in a fixed location shall be constructed to ensure the strength, rigidity and permanence required for proper scale performance.

This rule is intended to implement Iowa Code section 215.15.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.12(215) Pitless scales. A person may install pitless electronic, self-contained and vehicle scales in a permanent location provided the following conditions for the construction are incorporated:

85.12(1) Scale installation applications and permits must be submitted to the department of agriculture and land stewardship the same as the pit scale installation, with specifications being furnished by the manufacturer, for approval.

85.12(2) Piers shall extend below the frost line or be set on solid bed rock; and they shall be of reinforced concrete.

85.12(3) A reinforced concrete slab the width of the scale, at least six inches thick, shall run full length under the scale. Slab and piers shall be tied together with reinforcement rod, with a minimum clearance of eight inches between floor and weighbridge.

85.12(4) Reinforced portland cement approaches at least 12 inches thick, ten feet long and as wide as the scale, shall be provided on each end in a level plane with the scale platform.

85.12(5) Scale shall be installed at an elevation to ensure adequate drainage away from scale.

85.12(6) Scale platform and indicator shall be protected from wind and other elements which could cause inaccurate operation of the scale. Protection modifications that attach to or touch the scale or parts attached to the scale shall be approved by the department prior to installation.

This rule is intended to implement Iowa Code section 215.18.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.13(215) Master weights. Master scale test weights used for checking scales after being overhauled must be sealed as to their accuracy once every two years. Said weights after being sealed are to be used only as master test weights.

This rule is intended to implement Iowa Code section 215.17.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.14(215) Scale design. A scale shall be of such materials and construction that (1) it will support a load of its full nominal capacity without developing undue stresses or deflections, (2) it may reasonably be expected to withstand normal usage without undue impairment of accuracy or the correct functioning of parts, and (3) it will be reasonably permanent in adjustment.

85.14(1) Stability of indications. A scale shall be capable of repeating with reasonable precision its indications and recorded representations. This requirement shall be met irrespective of repeated manipulation of any scale element in a manner duplicating normal usage, including (a) displacement of
the indicating elements to the full extent allowed by the construction of the scale, (b) repeated operation of a locking device, and (c) repeated application or removal of unit weights.

85.14(2) Interchange or reversal of parts. Parts which may readily be interchanged or reversed in the course of normal usage shall be so constructed that their interchange or reversal will not materially affect the zero-load balance or the performance of the scale. Parts which may be interchanged or reversed in normal field assembly shall be (a) so constructed that their interchange or reversal will not affect the performance of the scale or (b) so marked as to show their proper positions.

85.14(3) Pivots. Pivots shall be made of hardened steel, except that agate may be used in prescription scales, and shall be firmly secured in position. Pivot knife-edges shall be sharp and straight and cone-pivot points shall be sharp.

85.14(4) Position of equipment, primary or recording indicating elements (electronic weighing elements). A device equipped with a primary or recording element shall be so positioned that its indications may be accurately read and the weighing operations may be observed from some reasonable “customer” position; the permissible distance between the equipment and a reasonable customer position shall be determined in each case upon the basis of individual circumstances, particularly the size and character of the indicating element; a window large enough should be placed in the building, and the installation should be so arranged as to afford an unobstructed view of the platform.

This rule is intended to implement Iowa Code section 215.18.

21—85.15(215) Weighbeams. All weighbeams, dials, or other mechanical weight-indicating elements must be placed on reinforced concrete footings or metal structural members. Concrete and metal must be of sufficient strength to keep mechanical weight-indicating elements in positive alignment with the lever system.

This rule is intended to implement Iowa Code section 215.18.

21—85.16(215) Beam box. Whenever a scale is equipped with a beam box, the beam uprights, shelf and cap must be made of channel irons or I-beams. The box covering the weighbeam may be constructed of wood or other material.

This rule is intended to implement Iowa Code section 215.18.

21—85.17 Reserved.

21—85.18(215) Weight capacity. The amount of weight indicated on the beam, dial or other auxiliary weighing attachments shall not exceed the factory-rated capacity of the scale, and said capacity shall be stamped on the butt of the beam (fractional bar is not included).

85.18(1) Auxiliary attachment. If auxiliary attachment is used, the amount of the auxiliary attachment must be blocked from the beam.

85.18(2) Normal position. The normal balance position of the weighbeam of a beam scale shall be horizontal.

85.18(3) Uncompensated spring scales. A small capacity uncompensated spring scale shall be conspicuously marked to show that the scale is illegal for use in the retail sale of foodstuffs other than fruits and vegetables.

This rule is intended to implement Iowa Code section 215.16.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.19(215) Provision for sealing coin slot. Provision shall be made on a coin-operated scale for applying a lead and wire seal in such a way that insertion of a coin in the coin slot will be prevented.

This rule is intended to implement Iowa Code section 215.18.

21—85.20(215) Stock racks. A livestock scale shall be equipped with a suitable enclosure, fitted with gates as required, within which livestock may be held on a scale platform; this rack shall be securely
mounted on the scale platform and adequate clearances shall be maintained around the outside of the rack.

This rule is intended to implement Iowa Code section 215.18.

21—85.21(215) Lengthening of platforms. The length of the platform of a vehicle scale shall not be increased beyond the manufacturer’s designed dimension except when the modification has been approved by competent scale-engineering authority, preferably that of the engineering department of the manufacturer of the scale, and by the weights and measures authority having jurisdiction over the scale.

This rule is intended to implement Iowa Code section 215.18.

21—85.22(215) Accessibility for testing purposes. A large capacity scale shall be so located, or such facilities for normal access thereto shall be provided that the test weights of the weights and measures official, in the denominations customarily provided, and in the amount deemed necessary by the weights and measures official for the proper testing of the scale, may readily be brought to the scale by the customary means; otherwise it shall be the responsibility of the scale owner or operator to supply such special facilities, including necessary labor, as may be required to transport the test weights to and from the scale, for testing purposes, as required by the weights and measures official.

This rule is intended to implement Iowa Code section 215.10.

21—85.23(215) Assistance in testing operations. If the design, construction or location of a large-capacity scale is such as to require a testing procedure involving special accessories or an abnormal amount of handling of test weights, such accessories or needed assistance in the form of labor shall be supplied by the owner or operator of the scale, as required by the weights and measures official.

This rule is intended to implement Iowa Code section 215.1A.

21—85.24(215) Beam scale. One on which the weights of loads of various magnitude are indicated solely by means of one or more weighbeam bars either alone or in combination with counterpoise weights.

This rule is intended to implement Iowa Code section 215.18.

21—85.25(215) Spring scale. An automatic-indicating scale in which the counterforce is supplied by an elastic body or system of such bodies, the shape or dimensions of which are changed by applied loads. A “compensated” spring scale is one equipped with a device intended to compensate for changes in the elasticity of the spring or springs resulting from changes in temperature, or one so constructed as to be substantially independent of such changes; an “uncompensated” spring scale is one not so equipped or constructed. A “straight-face” spring scale is one in which the indicator is affixed to the spring without intervening mechanism and which indicates weight values on a straight graduated reading-face. (The use in a scale of metal bands or strips in lieu of pivots and bearings does not constitute the scale a “spring” scale.)

This rule is intended to implement Iowa Code section 215.18.

21—85.26(215) Weighbeam or beam. An element comprising one or more bars equipped with movable poises or means for applying counterpoise weights or both.

This rule is intended to implement Iowa Code section 215.18.

21—85.27(215) Livestock scale. For purposes of the application of requirements for SR tolerances and minimum graduations, a scale having a nominal capacity of 6,000 pounds or more and used primarily for weighing livestock standing on the scale platform. (An “animal scale” is a scale adapted to weighing single heads of livestock.)

This rule is intended to implement Iowa Code section 215.18.
Scales

21—85.28(215) Wheel-load weighers and axle-load scales. The requirements for wheel-load weighers and axle-load scales apply only to such scales in official use for the enforcement of traffic in highway laws or for the collection of statistical information by government agencies.

This rule is intended to implement Iowa Code 215A.3.

21—85.29 Reserved.

Registered Servicers

21—85.30(215) Servicer’s license fee. The fee for a servicer’s license shall be $10. The license shall be valid for two years from its date of issuance.

This rule is intended to implement Iowa Code section 215.23.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.31 and 85.32 Reserved.

Measures

21—85.33(214A,208A) Motor fuel and antifreeze tests and standards. In the interest of uniformity, the tests and standards for motor fuel, including but not limited to renewable fuels such as ethanol blended gasoline, biodiesel, biodiesel blended fuel, and components such as an oxygenate, raffinate natural gasoline and motor vehicle antifreeze shall unless otherwise required by statute be those established by the American Society for Testing and Materials (ASTM) in effect on July 1, 2013, with the exception of ASTM D4814-13 for the distillation of gasoline for ethanol blended gasoline classified as higher than E-10 and up to E-50. Diesel fuel which does not comply with ASTM international specifications may be blended with biodiesel, additives or other diesel fuel so that the finished blended product does meet the applicable specifications. In addition, a motor fuel that contains more than one-half of 1 percent of methyl tertiary butyl ether (MTBE) by volume shall not be sold, offered for sale, or stored in Iowa.

This rule is intended to implement Iowa Code sections 208A.5, 208A.6, 214A.2 as amended by 2013 Iowa Acts, House File 458, and 215.18.

[ARC 6953C, IAB 8/21/13, effective 9/25/13]

21—85.34(215) Tolerances on petroleum products measuring devices. All pumps or meters at filling stations may have a tolerance of not over five cubic inches per five gallons, minus or plus. All pumps or measuring devices of a large capacity shall have a maintenance tolerance of 50 cubic inches, minus or plus, on a 50-gallon test. Add additional one-half cubic inch tolerance per gallon over and above a 50-gallon test. Acceptance tolerances on large capacity pumps and measuring devices shall be one-half the maintenance tolerances.

This rule is intended to implement Iowa Code sections 214.2 and 215.20.

21—85.35(215) Meter adjustment. If a meter is found to be incorrect and also capable of further adjustment, said meter shall be adjusted, rechecked and sealed. If a seal is broken for any cause other than by a state inspector, the department of agriculture and land stewardship shall be promptly notified of same.

85.35(1) Companies specializing in testing and repairing gasoline and fuel oil dispensing pumps or meters, shall be registered with the division of weights and measures, upon meeting requirements set forth by the department of agriculture and land stewardship.

85.35(2) In accordance with the contemplated revision of National Institute of Standards and Technology Handbook 44-4th Edition, G-UR4.5 (Replacement of Security Seal), accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.
85.35(3) If a meter is found to be inaccurate, “Repair and Placing in Service” card shall be left by the inspector.

85.35(4) After meter has been repaired and placed in service, the “Repair and Placing in Service” card must be returned to the Iowa Department of Agriculture and Land Stewardship, Weights and Measures Division.

This rule is intended to implement Iowa Code section 215.20.

21—85.36(215) Recording elements. All weighing or measuring devices shall be provided with appropriate recording or indicating elements, which shall be definite, accurate and easily read under any conditions of normal operation of the device. Graduations and a suitable indicator shall be provided in connection with indications and recorded representations designed to advance continuously. Graduations shall not be required in connection with indications or recorded representations designed to advance intermittently or with indications or recorded representations of the selector type.

This rule is intended to implement Iowa Code section 215.18.

21—85.37(215) Air eliminator. All gasoline or oil metering devices shall be equipped with an effective air eliminator to prevent passage of air or vapor through the meter. The vent from such eliminator shall not be closed or obstructed.

This rule is intended to implement Iowa Code section 215.18.

21—85.38(215) Delivery outlets. No means shall be provided by which any measured liquid can be diverted from the measuring chamber of the meter or the discharge line therefrom. However, two or more delivery outlets may be installed, if automatic means is provided to ensure that liquid can flow from only one such outlet at one time, and the direction of flow for which the mechanism may be set at any time is definitely and conspicuously indicated.

This rule is intended to implement Iowa Code section 215.18.


85.39(1) The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 amended or revised as of January 1, 2020, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

85.39(2) The National Institute of Standards and Technology (NIST) Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality, Handbook 133, Checking the Net Contents of Packaged Goods, Type Evaluation, and all supplements to these handbooks, as published by the National Institute of Standards and Technology amended or revised as of January 1, 2020, are adopted in their entirety by reference except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

21—85.40(215) ILP inspection tag or mark. If a meter is found to be inaccurate, an appropriate “inaccurate” card and a “repair and placing in service” card shall be left with the meter.

85.40(1) The “inaccurate” card is to be retained by the LP-gas dealer after repair.

85.40(2) The “repair and placing in service” card is to be forwarded to weights and measures division of the Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 215.5.

[ARC 6216C, IAB 2/23/22, effective 5/1/22]
21—85.41(215) **Meter repair.** If the meter has not been repaired within 30 days, the meter may be condemned and a red condemned tag may be attached to the meter.

This rule is intended to implement Iowa Code section 215.5.
[ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.42(215) **Security seal.** In accordance with the contemplated revision of National Institute of Standards and Technology Handbook 44, G-UR4.5 (Replacement of Security Seal), accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.

This rule is intended to implement Iowa Code section 215.12.
[ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.43(215) **LP-gas meter repairs.** Companies specializing in testing and repairing LP-gas meters shall be registered with the division of weights and measures as accredited repair and testing agencies upon meeting the requirements set forth by the department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 215.20.

21—85.44(215) **LP-gas delivery.** In the delivery of LP-gas by commercial bulk trucks (bobtail) across state lines, it shall be mandatory for all trucks delivering products to be equipped with a meter that has been either tested by the state of Iowa or that carries the seal of an accredited meter service and proving company.

This rule is intended to implement Iowa Code section 215.20.

21—85.45(215) **LP-gas meter registration.** The location of all LP-gas liquid meters in retail trade shall be listed, by the owner, with the department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 215.20.

21—85.46(215) **Reporting new LP-gas meters.** Upon putting a new or used meter into service in the state of Iowa, the user shall report to the weights and measures division.

This rule is intended to implement Iowa Code section 215.20.

21—85.47 **Reserved.**

21—85.48(214A.215) **Advertisement of the price of liquid petroleum products for retail use.**

85.48(1) Nothing in this rule shall be deemed to require that the price per gallon or liter or any grade or kind of liquid petroleum product sold on the station premises be displayed or advertised except on the liquid petroleum metering distribution pumps.

85.48(2) Petroleum product retailers, if they elect to advertise the unit price of their petroleum products at or near the curb, storefront or billboard, shall display the price per gallon or liter. The advertised price shall equal the computer price settings shown on the metering pump or shall be displayed in a manner clear to the purchaser for discounts offered for cash payment. Product names displayed shall match the product names on the retail motor fuel dispensers and all consumer receipts.

85.48(3) Notwithstanding the provisions of subrule 85.48(2), cash only prices may be posted by the petroleum marketer on the following basis:

a. Cash only prices must be disclosed on the posted sign as “cash only” or similar unequivocal wording in lettering 3” high and ¼” in stroke when the whole number price being shown is 36” or less in height; or in lettering at least 6” high and ½” in stroke when the whole number price is more than 36” in height.

b. Cash prices posted or advertised must be available to all customers, regardless of type of service (e.g., full service or self-service); or grade of product (e.g., regular, unleaded, gasohol and diesel).

c. Cash and credit prices or discounts must be prominently displayed on the dispenser.

d. A chart showing applicable cash discounts expressed in terms of both the computed and posted price shall be available to the customer on the service station premises.
85.48(4) On all outside display signs, the whole number shall not be less than 6" in height and not less than 3/8" in stroke, and any fraction shall be at least one-third of the size of the whole number in both height and width.
85.48(5) The price must be complete, including taxes without any missing numerals or fractions in the price.
85.48(6) Price advertising signs shall identify the type of product (e.g., regular, unleaded, gasohol and diesel), in lettering at least 3" high and ¼" in stroke when the whole number price being shown is 36" or less in height, or in lettering at least 6" high and ½" in stroke when the whole number price is more than 36" in height.
85.48(7) A price advertising sign shall display, if in liters and may display if in gallons, the unit measure at least in letters of 3” minimum.
85.48(8) Directional or informational signs for customer location of the type of service or product advertised shall be clearly and prominently displayed on the station premises in a manner not misleading to the public.
85.48(9) The advertising of other commodities or services offered for sale by petroleum retailers in such a way as to mislead the public with regard to petroleum product pricing shall be prohibited.
85.48(10) Weights and measures motor vehicle fuels decals. All motor vehicle fuel kept, offered or exposed for sale or sold at retail containing over 1 percent ethanol by volume shall be identified with a decal located on front of the motor vehicle fuel pump and placed between 30" and 50" above the driveway level or in an alternative location approved by the department. The appearance of the decal shall conform to the following standards adopted by the renewable fuels and coproducts advisory committee:
   a. The minimum design size of department-approved decals is 1.25" by 2.5".
   b. Labels may have the word “with” and shall have the name of the renewable fuel.
   c. Rescinded IAB 6/8/16, effective 7/13/16.
   d. All ethanol fuel pump stickers shall be replaced by department-approved “American Ethanol” fuel pump decals effective January 1, 2018.
   e. Biodiesel fuel containing 5 percent or less of biodiesel does not require the biodiesel label.
   f. Biodiesel fuel containing more than 5 percent but not more than 20 percent of renewable fuel must indicate on the label whether biodiesel or biomass-based diesel is the renewable fuel contained in the product. The label must also indicate that the fuel contains biodiesel or biomass-based diesel in quantities greater than 5 percent but not more than 20 percent. A specific blend percentage is not required on the label.
   g. Biodiesel fuel containing more than 20 percent renewable fuel must indicate on the label whether biodiesel or biomass-based diesel is the renewable fuel contained in the product. The label must also reflect the specific percentage of biodiesel or biomass-based diesel in the product.
85.48(11) Ethanol blended gasoline classified as higher than E-15 shall have a department-approved visible, legible flex fuel vehicle sticker on the pump or pump handle. The updated decals need to be in place by January 1, 2018.
85.48(12) Ethanol blended gasoline classified as higher than E-10 and up to E-15 shall have on the pump the federal sticker required by the Environmental Protection Agency in 40 CFR Part 80 published August 25, 2011.
85.48(13) Ethanol blended gasoline classified with an octane rating of 87 or higher may be labeled or advertised as “super” or “plus.”
85.48(14) Octane rating of fuel offered for sale shall be posted on the pump in a conspicuous place. The octane rating shall be posted for registered fuels. No octane rating shall be posted on the pump for ethanol blended gasoline classified as higher than E-15. The minimum octane rating for gasoline offered for sale by a retail dealer is 87 for regular grade gasoline and 90 for premium grade gasoline.
85.48(15) Any gasoline labeled as “leaded” shall be produced with the use of any lead additive or contain more than 0.05 grams of lead per gallon or more than 0.005 grams of phosphorus per gallon. As used in this subrule, “lead additive” means any substance containing lead or lead compounds.
85.48(16) Ethanol blended gasoline shall be designated E-xx where “xx” is the volume percent of ethanol in the ethanol gasoline. Ethanol blended gasoline formulated with a percentage of ethanol
between 70 and 85 percent by volume shall be designated as E-85. Biodiesel fuel shall be designated as B-xx where “xx” is more than 20 percent renewable fuel by volume.

85.48(17) A wholesale dealer selling ethanol blended gasoline or biodiesel fuel to a purchaser shall provide the purchaser with a statement indicating the actual volume percentage present. The statement may be on the sales slip provided or a similar document such as a bill of lading or invoice. This statement shall include the specific amount of biodiesel, even if the amount of renewable fuel is 5 percent or less.

This rule is intended to implement Iowa Code sections 214A.3, 214A.16 and 215.18.

[ARC 7628B, IAB 3/11/09, effective 4/15/09; ARC 8434B, IAB 12/30/09, effective 2/3/10; ARC 0079C, IAB 4/4/12, effective 3/16/12; ARC 0953C, IAB 8/21/13, effective 9/25/13; ARC 2577C, IAB 6/8/16, effective 7/13/16; ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.49(214A,215) Gallonage determination for retail sales. The method of determining gallonage on gasoline or diesel motor vehicle fuel for retail sale shall be on a gross volume basis. Temperature correction or any deliberate methods of heating shall be prohibited.

This rule is intended to implement Iowa Code sections 214A.3 and 215.18.

21—85.50(214,214A,215) Blender pumps. Motor fuel blender pumps or blender pumps installed or modified after November 1, 2008, which sell both ethanol blended gasoline classified as higher than E-15 and gasoline need to have at least two hoses per pump to separate registered gasoline fuels from flex fuels.

This rule is intended to implement Iowa Code section 214A.2.

[ARC 7628B, IAB 3/11/09, effective 4/15/09; ARC 0079C, IAB 4/4/12, effective 3/16/12; ARC 6216C, IAB 2/23/22, effective 5/1/22]

21—85.51 Reserved.

MOISTURE-MEASURING DEVICES

21—85.52(215A) Testing devices. All moisture-measuring devices will be tested against a measuring device which will be furnished by the department and all moisture-measuring devices will be inspected to determine whether they are in proper operational condition and supplied with the proper accessories.

This rule is intended to implement Iowa Code section 215A.2.

21—85.53(215A) Rejecting devices. Moisture-measuring devices may be rejected for any of the following reasons:

85.53(1) The moisture-measuring device tested is found to be out of tolerance with the measuring device used by the department by one of the inspectors so assigned by more than 0.7 percent on grain moisture content.

85.53(2) The person does not have available the latest charts for type of device being used.

85.53(3) The person does not have available the proper scale or scales and thermometers for use with the type of device being used.

85.53(4) The moisture-measuring device is not free from excessive dirt, debris, cracked glass or is not kept in good operational condition at all times.

This rule is intended to implement Iowa Code section 215A.6.

21—85.54(215,215A) Specifications and standards for moisture-measuring devices. The specifications and tolerances for moisture-measuring devices are those established by the United States Department of Agriculture as of November 15, 1971, in chapter XII of GR instruction 916-6, equipment manual, used by the federal grain inspection service; and those recommended by National Bureau of Standards and published in National Bureau of Standards Handbook 44 as of July 1, 1985.

This rule is intended to implement Iowa Code section 215A.3.

21—85.55 and 85.56 Reserved.

21—85.57(215) Testing high-moisture grain. When testing high-moisture grain the operator of a moisture-measuring device shall use the following procedure: Test each sample six times adding the six
measurements thus obtained and dividing the total by six to obtain an average which shall be deemed to be the moisture content of such sample.

This rule is intended to implement Iowa Code section 215A.7.

21—85.58 to 85.62 Reserved.

HOPPER SCALES

21—85.63(215) Hopper scales. A “hopper scale” is a scale designed for weighing bulk commodities whose load-receiving element is a tank, box, or hopper mounted on a weighing element; and includes automatic hopper scales, grain hopper scales, and construction material hopper scales.

85.63(1) Installation. A hopper scale used for commercial purposes shall be so located, or such facilities for normal access thereto shall be so provided that the test weights of the weights and measures official, in the denominations customarily provided, and in the amount deemed necessary by the weights and measures official for the proper testing of the scale, may readily be brought to the scale by customary means; otherwise it shall be the responsibility of the scale owner or operator to supply such special facilities, as required by the weights and measures official. The hopper scale shall have extended angle irons with hooks 14 inches from edge to hopper, in all four corners, to allow the inspector to hook his chain and binder to 500# weight (or 1000# weight) for testing.

85.63(2) Method of hopper scale testing. The method to be used in testing the scale for weighing accuracy shall be by the suspension of standard test weights at each corner of the weighbridge, suspended from a point as near as possible over the center of the main bearing. A suitable permanent device to which the suspension equipment may be connected shall be properly located and placed on each corner of the weighbridge. There is to be no obstruction, such as machinery, spouting or insufficient wall clearance, etc., that will interfere with the free suspension of the weights.

85.63(3) Approved by department. Newly installed hopper scales must be approved by the department; this approval shall be based upon blueprints and specifications submitted for this purpose.

This rule is intended to implement Iowa Code sections 215.10 and 215.18.

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495—4.1(97B) Covered employers.

4.1(1) Definition. All public employers in the state of Iowa, its cities, counties, townships, agencies, political subdivisions, instrumentalities and public schools are required to participate in IPERS. For the purposes of these rules, the following definitions also apply:

a. “Political subdivision” means a geographic area or territorial division of the state which has responsibility for certain governmental functions. Political subdivisions are characterized by public election of officers and taxing powers. The following examples are representative: cities, municipalities, counties, townships, schools and school districts, drainage and levee districts, and utilities.

b. “Instrumentality of the state or a political subdivision” means an independent entity that is organized to carry on some specific function of government. Public instrumentalities are created by some form of governmental body, including federal and state statutes and regulations, and are characterized by being under the control of a governmental body. Such control may include final budgetary authorization, general policy development, appointment of a board by a governmental body, and allocation of funds.

c. “Public agency” means state agencies and agencies of political subdivisions. Representative examples include an executive board, commission, bureau, division, office, or department of the state or a political subdivision.

d. Effective July 1, 1994, the definition of employer includes an area agency on aging that does not offer an alternative plan to all of its employees that is qualified under the federal Internal Revenue Code.

Covered employers include, but are not limited to: the state of Iowa and its administrative agencies; counties, including their hospitals and county homes; cities, including their hospitals, park boards and commissions; recreation commissions; townships; public libraries; cemetery associations; municipal utilities including waterworks, gasworks, electric light and power; school districts including their lunch and activity programs; state colleges and universities; and state hospitals and institutions.

An entity not already reporting to IPERS which meets the conditions for becoming an IPERS-covered employer shall immediately contact IPERS to provide notice which includes the name and address of the entity and other information required by IPERS. If, after review of this information, IPERS determines that the entity should be enrolled as a covered employer, IPERS will notify the entity and provide an IPERS account number for the entity to use when submitting information. IPERS shall not be required to provide benefits otherwise available under Iowa Code chapter 97B for periods of service prior to the effective date for which IPERS actually approves the entity for coverage, unless the employer agrees to pay the full actuarial cost of providing such benefits.

An employer may request a revised beginning date for its status as a covered employer. The employer must submit acceptable proof to IPERS that its status as a covered employer began earlier than the date previously provided. In such case, the employer shall provide IPERS coverage retroactively to all employees providing services to that employer on or after the revised beginning date and shall pay all actuarial costs.

4.1(2) Name change. Any employer which has a change of name, address, title of the employer, its reporting official or any other identifying information shall immediately give notice in writing to IPERS. The notice shall provide IPERS with the following information:

a. Former name;

b. Former address;

c. IPERS account number;

d. New name, address, and telephone number of the employer;

e. Reason for the change if other than a change of reporting official; and

f. Effective date of the change.

4.1(3) Termination. Any employer which terminates or is dissolved for any reason shall provide IPERS with the following:
a. Complete name and address of the dissolved entity;
b. Assigned IPERS account number;
c. Last date on which wages were paid;
d. Date on which the entity dissolved;
e. Reason for the dissolution;
f. Whether or not the entity expects to pay wages in the future;
g. Whether the entity is being absorbed by another covered employer;
h. Name and address of absorbing employer if applicable; and
i. Name and address of employer that will retain the records of the dissolved entity.

4.1(4) Reports of dissolved or absorbed employers. An employer that has been dissolved or entirely absorbed by another employer is required to file a monthly report with IPERS through the effective date on which it was dissolved or absorbed. Any wages paid after this date are reported under the account number assigned to the new or successor employer, if any.

4.1(5) IPERS account number. Each employer is assigned an IPERS account number. This number should be used on all correspondence and reporting forms directed to IPERS.

4.1(6) Patient advocates. For patient advocates employed under Iowa Code section 229.19, the county or counties for which services are performed shall be treated as the covered employer(s) of such individuals, and each such employer is responsible for forwarding reports and for withholding and forwarding the applicable IPERS contributions on wages paid by each employer.

495—4.2(97B) Records to be kept by the employer.

4.2(1) General. Each employer shall maintain records to show the information hereinafter indicated. Records shall be kept in the form and manner prescribed by IPERS. Records shall be open to inspection and may be copied by IPERS and its authorized representatives at any reasonable time.

4.2(2) Required information. Records shall show with respect to each employee:
a. Employee’s name, address, gender, and social security account number, and other demographic information that may be required;
b. Each date the employee was paid wages or other wage equivalent (e.g., room, board);
c. Total amount of wages paid on each date including noncash wage equivalents;
d. Total amount of wages including wage equivalents on which IPERS contributions are payable;
e. Amount withheld from wages or wage equivalents for the employee’s share of IPERS contributions; and
f. Effective January 1, 1995, records will show, with respect to each employee, member contributions picked up by the employer.

4.2(3) Reports.
a. Each employer shall make reports as IPERS may require and shall comply with the instructions provided by IPERS for the reports.
b. Effective July 1, 2021, employers shall report the termination date and date of final paycheck for all terminating employees to IPERS with the final wage report for such employee. This report shall contain the employee’s last-known mailing address and such other information as IPERS might require.
c. The Iowa department of administrative services and the Iowa department of corrections shall notify IPERS prior to adding additional job classifications to the protection occupation class. The notification shall include the effective date, names and social security numbers of the employees involved.

4.2(4) Fees. IPERS may assess to the employer a fee for administrative costs as described in subrule 4.3(6).

495—4.3(97B) Wage reporting and payment of contributions by employers.

4.3(1) Payment of contributions. For wages paid on or after July 1, 2008, all covered employers are required to pay contributions on a monthly basis. Upon enrollment as an IPERS-covered employer,
the employer shall receive the appropriate forms and instructions from IPERS to submit contributions. IPERS will provide monthly statements to each employer.

IPERS accepts the payment of contributions through electronic funds transfer. Payments utilizing the electronic funds transfer system shall be made according to the procedure described in subrule 4.3(3).

IPERS accepts the payment of contributions using checks and remittance advice forms. Employers filing monthly employer remittance advice forms on paper for two or more employers shall attach the checks to each remittance form. Checks shall be made payable to the Iowa Public Employees’ Retirement System and mailed with the employer remittance advice form to IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Effective August 1, 2008, such payments and reports shall be subject to a fee as described in subrule 4.3(6).

4.3(2) Wage reports. For wages paid on or after July 1, 2008, all IPERS-covered employers are required to file wage reports on a monthly basis. IPERS will provide the forms and instructions for wage reporting to employers. Each wage report must include the required information for all employees who earned reportable wages or wage equivalents under IPERS. The reports must be received by IPERS on or before the fifteenth day of the month following the month in which the wages were paid. If the fifteenth day falls on a weekend or state-observed holiday, the wage report is due on the next regularly scheduled business day.

Effective August 1, 2008, IPERS shall accept wage reports electronically via IPERS’ employer self-service Internet application or as a paper report. However, for those employers submitting reports other than via IPERS’ employer self-service Internet application, IPERS shall charge a fee as described in subrule 4.3(6).

4.3(3) Deadlines for payment of contributions.

a. Contributions must be paid monthly and must be received by IPERS on or before the fifteenth day of the month following the month in which wages were paid. If the fifteenth day falls on a weekend or state-observed holiday, the contribution is due on the next regularly scheduled business day.

b. For employers paying contributions by electronic funds transfer, wage reports and contributions may be submitted at the same time.

4.3(4) Request for time extension. A request for an extension of time to file a wage report or pay a contribution may be granted by IPERS for good cause if a request is made before the due date, but no extension shall exceed 15 days beyond the due date. If an employer that has been granted an extension fails to submit the wage report or pay the contribution on or before the end of the extension period, the applicable interest and fees shall be charged and paid from the original due date as if no extension had been granted. If the fifteenth day falls on a weekend or state-observed holiday, the contribution or wage report is due on the next regularly scheduled business day.

To establish good cause for an extension of time to file a wage report or pay contributions, the employer must show that the delinquency was not due to mere negligence, carelessness or inattention. The employer must affirmatively show that it did not file the wage report or timely pay a contribution because of some occurrence beyond the control of the employer.

4.3(5) No reportable wages. When an employer has no reportable wages during the applicable reporting period, the wage reporting document shall be filed according to subrule 4.3(2). Even if there are no reportable wages, the employer’s account is considered delinquent for the reporting period and is subject to a fee until the report is filed. However, if the employer has notified IPERS on or before the due date that there are no wages to report, IPERS will adjust the due date, and no fee will be charged.

4.3(6) Fees for noncompliance. IPERS is authorized to impose reasonable fees on employers that do not file wage reports through the IPERS’ employer self-service Internet application as described in subrule 4.3(2), that fail to timely file accurate wage reports, or that fail to pay contributions when due pursuant to subrule 4.3(3).

For submissions filed on or after August 1, 2008, IPERS shall charge employers a processing fee of $20 plus 25 cents per employee for late submissions and manual processing of wage reports by IPERS. Employers that are late or that do not use IPERS’ employer self-service Internet application may be charged both fees. In addition, if a fee for noncompliance is not paid by the fifteenth day of the month after the fee is assessed, the fee will accrue interest daily at the interest rate provided in Iowa Code
sections 97B.9 and 97B.70. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full.

If the due date for a fee falls on a weekend or state-observed holiday, the due date shall be the next regularly scheduled business day.

4.3(7) *Erroneously reported wages for employees not covered under IPERS.* Employers that erroneously report wages for employees who are not eligible for coverage under IPERS may file an IPERS wage reporting adjustment form. IPERS shall return a warrant or issue a credit for both the employer and employee contributions made in error. The employer is responsible for returning the employees’ share and for filing corrected federal and state wage reporting forms. Adjustments in such cases will be reported on the employer’s monthly statement. Under no circumstance shall the employer adjust these wages by underreporting wages on a future periodic wage reporting document. Wages shall never be reported as a negative amount. An employer that completes the employer portion of an employee’s request for a refund on an IPERS refund application form will not be permitted to file a periodic wage reporting adjustment form for that employee for the same time period. No fee will be assessed to employers that correct information as provided under this subrule.

4.3(8) *Contributions paid on wages in excess of the annual covered wage maximum.* For wages paid on or after July 1, 2008, whenever IPERS determines that an employee’s wages will exceed the annual maximum established under Section 401(a)(17)(A) and the cost-of-living adjustments to that maximum permitted under Section 401(a)(17)(B) of the Internal Revenue Code during a given month, IPERS shall notify the applicable employer and shall return the related excess contributions. IPERS will detail on the monthly report those employees for whom wages were reported in excess of the covered wage ceiling. The employer is responsible for returning the employee’s share of excess contributions and making the applicable tax corrections.

4.3(9) *Termination within less than six months of the date of employment.* If an employee hired for permanent employment terminates within six months of the date of employment, the employer may file an IPERS form for reporting adjustments to receive a warrant or a credit, as elected by the employer, for both the employer’s and employee’s portions of the contributions. It is the responsibility of the employer to return the employee’s share. “Termination within less than six months of the date of employment” means employment is terminated prior to the day before the employee’s six-month anniversary date. For example, an employee hired on February 10 whose last day is August 8 would be treated as having resigned within less than six months. An employee hired on February 10 whose last day is August 9 (the day before the six-month anniversary date, August 10) would be treated as having worked six months and would be eligible for a refund.

4.3(10) *Reinstatement following an employment dispute.* Employees who are reinstated following an employment dispute may restore membership service credit as described in 495—9.5(97B).

495—4.4(97B) *Accrual of interest and application of employer payments.* Interest or charges as provided under Iowa Code section 97B.9 shall accrue on all employer payments not received by IPERS by the due date, except that interest or charges may be waived by IPERS if the employer requests an extension of time under subrule 4.3(4) prior to the due date. Effective August 1, 2008, employers that remit late contributions shall be charged a minimum of $20 or interest at the rate provided in Iowa Code section 97B.70, whichever is greater. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full. Payments received from employers having unpaid account balances shall first be applied to the oldest outstanding balance.

495—4.5(97B) *Credit memos voided.* Rescinded IAB 3/26/08, effective 4/30/08.

495—4.6(97B) *Contribution rates.* The following contribution rate schedule, payable on the covered wage of the member, is determined by the position or classification and the occupation class code of the member.

4.6(1) Contribution rates for regular class members.
a. The following contribution rates were established by the Iowa legislature for all regular class members for the indicated periods:

<table>
<thead>
<tr>
<th></th>
<th>Effective July 1, 2007</th>
<th>Effective July 1, 2008</th>
<th>Effective July 1, 2009</th>
<th>Effective July 1, 2010</th>
<th>Effective July 1, 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined rate</td>
<td>9.95%</td>
<td>10.45%</td>
<td>10.95%</td>
<td>11.45%</td>
<td>13.45%</td>
</tr>
<tr>
<td>Employer</td>
<td>6.05%</td>
<td>6.35%</td>
<td>6.65%</td>
<td>6.95%</td>
<td>8.07%</td>
</tr>
<tr>
<td>Employee</td>
<td>3.90%</td>
<td>4.10%</td>
<td>4.30%</td>
<td>4.50%</td>
<td>5.38%</td>
</tr>
</tbody>
</table>

b. Effective July 1, 2012, and every year thereafter, the contribution rates for regular members shall be publicly declared by IPERS staff no later than the preceding December as determined by the annual valuation of the preceding fiscal year. The public declaration of contribution rates will be followed by rule making that will include a notice and comment period and that will become effective July 1 of the next fiscal year. Contribution rates for regular members are as follows.

<table>
<thead>
<tr>
<th></th>
<th>Effective July 1, 2018</th>
<th>Effective July 1, 2019</th>
<th>Effective July 1, 2020</th>
<th>Effective July 1, 2021</th>
<th>Effective July 1, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined rate</td>
<td>15.73%</td>
<td>15.73%</td>
<td>15.73%</td>
<td>15.73%</td>
<td>15.73%</td>
</tr>
<tr>
<td>Employer</td>
<td>9.44%</td>
<td>9.44%</td>
<td>9.44%</td>
<td>9.44%</td>
<td>9.44%</td>
</tr>
<tr>
<td>Employee</td>
<td>6.29%</td>
<td>6.29%</td>
<td>6.29%</td>
<td>6.29%</td>
<td>6.29%</td>
</tr>
</tbody>
</table>

4.6(2) Contribution rates for sheriffs and deputy sheriffs are as follows.

<table>
<thead>
<tr>
<th></th>
<th>Effective July 1, 2018</th>
<th>Effective July 1, 2019</th>
<th>Effective July 1, 2020</th>
<th>Effective July 1, 2021</th>
<th>Effective July 1, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined rate</td>
<td>19.52%</td>
<td>19.02%</td>
<td>18.52%</td>
<td>18.02%</td>
<td>17.52%</td>
</tr>
<tr>
<td>Employer</td>
<td>9.76%</td>
<td>9.51%</td>
<td>9.26%</td>
<td>9.01%</td>
<td>8.76%</td>
</tr>
<tr>
<td>Employee</td>
<td>9.76%</td>
<td>9.51%</td>
<td>9.26%</td>
<td>9.01%</td>
<td>8.76%</td>
</tr>
</tbody>
</table>

4.6(3) Contribution rates for protection occupations are as follows.

<table>
<thead>
<tr>
<th></th>
<th>Effective July 1, 2018</th>
<th>Effective July 1, 2019</th>
<th>Effective July 1, 2020</th>
<th>Effective July 1, 2021</th>
<th>Effective July 1, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined rate</td>
<td>17.02%</td>
<td>16.52%</td>
<td>16.02%</td>
<td>15.52%</td>
<td>15.52%</td>
</tr>
<tr>
<td>Employer</td>
<td>10.21%</td>
<td>9.91%</td>
<td>9.61%</td>
<td>9.31%</td>
<td>9.31%</td>
</tr>
<tr>
<td>Employee</td>
<td>6.81%</td>
<td>6.61%</td>
<td>6.41%</td>
<td>6.21%</td>
<td>6.21%</td>
</tr>
</tbody>
</table>

4.6(4) Members employed in a “protection occupation” shall include:


b. Effective July 1, 1994, a marshal in a city not covered under Iowa Code chapter 400 or a firefighter or police officer of a city not participating under Iowa Code chapter 410 or 411. (See employee classifications in rule 495—5.1(97B).) Effective January 1, 1995, part-time police officers shall be included.

c. Correctional officers as provided for in Iowa Code section 97B.49B. Employees who, prior to December 22, 1989, were in a “correctional officer” position but whose position is found to no longer meet this definition on or after that date shall retain coverage, but only for as long as the employee is in that position or another “correctional officer” position that meets this definition. Movement to a position that does not meet this definition shall cancel “protection occupation” coverage.

d. Airport firefighters employed by the military division of the department of public defense (airport firefighters). Effective July 1, 2004, airport firefighters become part of and shall make the same contributions as the other members covered under Iowa Code section 97B.49B. From July 1, 1994, through June 30, 2004, airport firefighters were grouped with and made the same contributions
as sheriffs and deputy sheriffs. From July 1, 1988, through June 30, 1994, airport firefighters were grouped with and made the same contributions as the other members covered under Iowa Code section 97B.49B. From July 1, 1986, through June 30, 1988, airport firefighters were a separate protection occupation group and made contributions at a rate calculated for members of that group. Prior to July 1, 1986, airport firefighters were grouped with regular members and made the same contributions as regular members.

Notwithstanding the foregoing, all airport firefighter service prior to July 1, 2004, shall be coded by IPERS as sheriff/deputy sheriff/airport firefighter service, and all airport firefighter service after June 30, 2004, shall be coded by IPERS as protection occupation service. This coding, however, shall not supersede provisions of this title that require members to make contributions at higher rates in order to receive certain benefits, such as in the hybrid formula pursuant to 495—12.4(97B).

e. Airport safety officers employed under Iowa Code chapter 400 by an airport commission in a city with a population of 100,000 or more, and employees covered by the Iowa Code chapter 8A merit system whose primary duties are providing airport security and who carry or are licensed to carry firearms while performing those duties.

f. Effective July 1, 1990, an employee of the state department of transportation who is designated as a “peace officer” by resolution under Iowa Code section 321.477.

g. Effective July 1, 1992, a fire prevention inspector peace officer employed by the department of public safety. Effective July 1, 1994, a fire prevention inspector peace officer employed before that date who does not elect coverage under Iowa Code chapter 97A in lieu of IPERS.

h. Effective July 1, 1994, through June 30, 1998, a parole officer III with a judicial district department of correctional services.

i. Effective July 1, 1994, through June 30, 1998, a probation officer III with a judicial district department of correctional services.

j. Effective July 1, 2008, county jailers and detention officers working as jailers.

k. Effective July 1, 2008, National Guard installation security officers.

l. Effective July 1, 2008, emergency medical care providers.

m. Effective July 1, 2008, special investigators who are employed by county attorneys.

n. Effective July 1, 2014, an employee of the insurance division of the department of commerce who as a condition of employment is required to be certified by the Iowa law enforcement academy and who is required to perform the duties of a peace officer as provided in Iowa Code section 507E.8.

o. Effective July 1, 2014, an employee of a judicial district department of correctional services whose condition of employment requires the employee to be certified by the Iowa law enforcement academy and who is required to perform the duties of a parole officer as provided in Iowa Code section 906.2.

p. Effective July 1, 2016, a peace officer employed by an institution under the control of the state board of regents whose position requires law enforcement certification pursuant to Iowa Code section 262.13.

q. Effective July 1, 2016, a person employed by the department of human services as a psychiatric security specialist at a civil commitment unit for sexually violent offenders facility.

4.6(5) Service reclassification.

a. Prior to July 1, 2006, except as otherwise indicated in the implementing legislation or these rules, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall be coded by IPERS staff as special service if certified by the employer as constituting special service under current law. No additional contributions shall be required by regular service reclassified as special service under this paragraph.

b. Effective July 1, 2006, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall continue to be coded by IPERS staff as regular service unless the legislature specifically provides in its legislation for payment of the related actuarial costs of such reclassified service as required under Iowa Code section 97B.65.
4.6(6) Effective July 1, 2006, in the determination of a sheriff’s or deputy sheriff’s eligibility for benefits and the amount of such benefits under Iowa Code section 97B.49C, all protection occupation service credits for that member shall count toward the total years of eligible service as a sheriff or deputy sheriff. However, this subrule shall not be construed to alter the statutory requirement that a sheriff or deputy sheriff must be employed as a sheriff or deputy sheriff at termination of covered employment in order to qualify for benefits under Iowa Code section 97B.49C.

4.6(7) Pretax.
   a. Effective January 1, 1995, employers must pay member contributions on a pretax basis for federal income tax purposes only. Such contributions are considered employer contributions for federal income tax purposes and employee contributions for all other purposes. Employers must reduce the member’s salary reportable for federal income tax purposes by the amount of the member’s contribution.
   b. Salaries reportable for purposes other than federal income tax will not be reduced, including for IPERS, FICA, and, through December 31, 1998, state income tax purposes.
   c. Effective January 1, 1999, employers must pay member contributions on a pretax basis for both federal and state income tax purposes.

495—4.7(97B) Employee information to be provided by covered employers. Covered employers are required to enroll new employees prior to reporting wages for the new employees using IPERS’ employer self-service Internet application. Enrollment information shall include, but is not limited to, the following: member’s name, social security number, date of birth, date of hire, occupation code, gender, mailing address, and employer identification number. When an employee terminates employment with a covered employer, the employer shall provide the termination date and the date of the employee’s final paycheck.

495—4.8(97B) Additional employer contributions from employer-mandated reduction in hours or by the exercise of bumping rights to avoid a layoff. Rescinded ARC 2981C, IAB 3/15/17, effective 4/19/17.

These rules are intended to implement Iowa Code sections 97B.4, 97B.9, 97B.14, 97B.14A, 97B.38, 97B.49A to 97B.49I, 97B.65 and 97B.70 and 2009 Iowa Acts, chapter 170, section 51, as amended by 2010 Iowa Acts, House File 2518, sections 36 and 41.
[Filed ARC 9068B (Notice ARC 8928B, IAB 7/14/10), IAB 9/8/10, effective 10/13/10]
[Filed ARC 9397B (Notice ARC 9310B, IAB 12/29/10), IAB 2/23/11, effective 3/30/11]
[Filed ARC 0017C (Notice ARC 9951B, IAB 12/28/11), IAB 2/22/12, effective 3/28/12]
[Filed ARC 0662C (Notice ARC 0598C, IAB 2/6/13), IAB 4/3/13, effective 5/8/13]
[Filed ARC 1348C (Notice ARC 1256C, IAB 12/25/13), IAB 2/19/14, effective 3/26/14]
[Filed ARC 1887C (Notice ARC 1800C, IAB 12/24/14), IAB 2/18/15, effective 3/25/15]
[Filed ARC 2402C (Notice ARC 2331C, IAB 12/23/15), IAB 2/17/16, effective 3/23/16]
[Filed ARC 2981C (Notice ARC 2892C, IAB 1/18/17), IAB 3/15/17, effective 4/19/17]
[Filed ARC 3684C (Notice ARC 3537C, IAB 1/3/18), IAB 3/14/18, effective 4/18/18]
[Filed ARC 4337C (Notice ARC 4238C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]
[Filed ARC 5027C (Notice ARC 4925C, IAB 2/12/20), IAB 4/8/20, effective 5/13/20]
[Filed ARC 5489C (Notice ARC 5359C, IAB 12/30/20), IAB 3/10/21, effective 4/14/21]
[Filed ARC 6215C (Notice ARC 6117C, IAB 12/29/21), IAB 2/23/22, effective 3/30/22]
CHAPTER 5
EMPLOYEES

[Prior to 6/9/04, see 581—Ch 21]

495—5.1(97B) Identification of employees covered by the IPERS retirement law.

5.1(1) Definition of employee—generally. A person is in employment as defined by Iowa Code chapter 97B if the person and the covered employer enter into a relationship which both recognize to be that of employer/employee. An employee is an individual who is subject to control by the agency for whom the individual performs services for wages. The term “control” refers only to employment and includes control over the way the employee works, where the employee works and the hours the employee works. The control need not be actually exercised for an employer/employee relationship to exist; the right to exercise control is sufficient. A public official may be an “employee” as defined in the agreement between the state of Iowa and the Secretary of Health and Human Services, without the element of direction and control.

A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration.

IPERS makes employment determinations based on a common law test, which factors in behavior control, financial control and relationship of the parties. Once this decision is made, if any party disagrees with the decision, the party in disagreement will be required to submit an SS-8 Determination of Workers Status form directly to the Internal Revenue Service (IRS). Upon receipt of the determination by the IRS, IPERS will review this hiring arrangement a second time. A Final Agency Determination will be made at that time.

Further, if a person is performing essential governmental functions that can only be performed by a governmental employee, that person shall be IPERS-covered.

5.1(2) Optional coverage procedures—July 1, 1994, through December 31, 1998. Effective July 1, 1994, a person who is employed in a position which allows IPERS coverage to be elected as specified in Iowa Code section 97B.1A(8) must file a one-time election form with IPERS for coverage. If the person was employed before July 1, 1994, the election must be postmarked on or before July 1, 1995. If the person was employed on or after July 1, 1994, the election must be postmarked within 60 days from the date the person was employed. Coverage will be prospective from the date the election is approved by IPERS. The election, once filed, is irrevocable and continues until the member terminates covered employment. The election window does not allow members who had been in coverage to elect out.

5.1(3) Election out of Iowa Code chapter 97B coverage by certain protection occupation groups. Effective July 1, 1994, members employed before that date as a gaming enforcement officer, a fire prevention inspector peace officer, or an employee of the division of capitol police (except clerical workers), may elect coverage under Iowa Code chapter 97A in lieu of IPERS. The election must be directed to the board of trustees established in Iowa Code section 97A.5 and postmarked on or before July 1, 1995.

5.1(4) Optional coverage procedures—January 1, 1999. Effective January 1, 1999, new hires who may elect out of IPERS coverage shall be covered on the date of hire and shall have 60 days to elect out of coverage in writing using IPERS’ forms. Notwithstanding the foregoing, employees who had the right to elect IPERS coverage prior to January 1, 1999, but did not do so, shall be covered as of January 1, 1999, and shall have until December 31, 1999, to elect out of coverage.

[ARC 3684C, IAB 3/14/18, effective 4/18/18]

495—5.2(97B) Coverage treatment for specific employee classifications. Employment as defined in Iowa Code chapter 97B is not synonymous with IPERS membership. Some classes of employees are explicitly excluded or membership is made optional under Iowa Code section 97B.1A(8) “b,” while other classes are excluded or membership is made optional by their nature. The following subrules are designed to clarify the status of certain employee positions.

5.2(1) Elected officials. Effective January 1, 1999, the following persons shall be covered by IPERS unless they elect out of coverage:

a. Elected officials in positions for which the compensation is on a fee basis;
b. Elected officials of school districts;
c. Elected officials of townships; and
d. Elected officials of other political subdivisions who are in part-time positions.

An elected official who becomes covered under this chapter may later terminate membership by informing IPERS in writing of the expiration of the member’s term of office or, if a member of the general assembly, of the intention to terminate coverage.

An elected official does not terminate covered employment with the end of each term of office if the official has been reelected for the same position. If elected for another position, the official shall be covered unless the official elects out of coverage.

5.2(2) County and municipal court bailiffs who receive compensation for duties shall be covered.

5.2(3) Full-time city attorneys shall be covered. Part-time city attorneys who are considered to be public officers or public employees shall be covered.

5.2(4) Magistrates shall be covered unless they elect out of IPERS coverage. Having made a choice to remain in IPERS coverage, a magistrate may not revoke that election and discontinue such coverage.

5.2(5) Office and clerical staff of a county medical examiner’s office shall be covered. Effective January 1, 1995, county medical examiners and deputy county medical examiners who are full-time county employees shall be covered.

5.2(6) Police, firefighters, emergency personnel, and certain peace officers.
   a. Effective July 1, 1994, police officers and firefighters of a city not participating in the retirement systems established under Iowa Code chapter 410 or 411 shall be covered.
   b. Emergency personnel, such as ambulance drivers, who are deemed to be firefighters by the employer shall be covered as firefighters.
   c. Effective January 1, 1995, part-time police officers shall be covered in the same manner as full-time police officers.
   d. Reserve peace officers employed under Iowa Code chapter 80D shall not be covered in accordance with Iowa Code section 80D.14.
   e. A police chief or fire chief who has submitted a written request to the board of trustees created by Iowa Code section 411.36 to be exempt from coverage under Iowa Code chapter 411 shall not be covered under IPERS in accordance with Iowa Code sections 384.6(1) and 411.3. The city shall make on behalf of such person the contributions required under Iowa Code section 384.6(1) to the International City Management Association/Retirement Corporation.
   f. Peace officer candidates of the department of public safety shall not be covered.
   g. An emergency medical care provider who provides emergency medical services, as defined in Iowa Code section 147A.1, and who is not a member of the retirement systems established in Iowa Code chapter 401 or 411 shall be covered.

5.2(7) County social welfare employees shall be covered.

5.2(8) Members of county soldiers relief commissions and their administrative or clerical employees shall be covered.

5.2(9) Part-time elected mayors, mayors of townships, and mayors who are paid on a fee basis are covered under IPERS unless they elect out of coverage. All other mayors, including appointed mayors and full-time elected mayors, whether elected by popular vote or by some other means, are covered.

5.2(10) Field assessors shall be covered.

5.2(11) Members of county boards of supervisors who receive an annual salary shall be covered. Effective for terms of office beginning January 1, 1999, part-time members of county boards of supervisors who receive an annual salary or are paid on a per diem basis shall be covered unless they elect out of coverage.

5.2(12) Temporary employees of the general assembly who are employed for less than six months in a calendar year or work less than 1,040 hours in a calendar year shall be covered unless the employee elects out of coverage. If coverage is elected, the member may not terminate coverage until termination of covered employment.
5.2(13) Effective July 1, 2008, temporary employees shall not be covered provided that they have not established an ongoing relationship with an IPERS-covered employer. An ongoing relationship with an IPERS-covered employer is established when:

a. The employee is paid covered wages of $1,000 or more per quarter in two consecutive quarters; or

b. The employee is employed by a covered employer for 1,040 or more hours in a calendar year.

Coverage shall begin when the permanency of the relationship is established and shall continue until the employee’s relationship with the covered employer is severed. If there is no formal severance, coverage for a person hired for temporary employment who has established an ongoing relationship with a covered employer shall continue until that person completes four consecutive calendar quarters in which no services are performed for that employer after the last covered calendar quarter.

No service credit will be granted to a temporary employee who has become a covered employee under this rule for any quarter in which no covered wages are reported unless the employee is on a leave of absence that qualifies for service credit under Iowa Code section 97B.1A(20). Contributions shall be paid, and service credit shall be accrued, when wages are paid in the quarter after the ongoing relationship has been established.

5.2(14) Drainage district employees who have vested rights to IPERS through earlier participation or employees of drainage districts shall be covered unless they elect out of coverage.

5.2(15) Full-time and part-time county attorneys shall be covered.

5.2(16) Tax study committee employees shall be covered.

5.2(17) School bus drivers who are considered to be public employees shall be covered. School bus drivers who are independent contractors shall not be covered. A determination must be made by IPERS on the facts presented on a case-by-case basis.

5.2(18) Full-time or part-time students employed part-time by the educational institution where they are enrolled shall not be IPERS-covered. Full-time and part-time student status is as defined by the individual educational institutions. Full-time and part-time employment status is as defined by the individual employers. If the employer is not the institution where the college student is enrolled, the college student is not exempt from IPERS coverage and employers would determine IPERS coverage by applying the usual permanent or temporary rules.

High school and lower grade students continue to be exempt from IPERS coverage.

5.2(19) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants and specialists in their fields of specialized knowledge or skill shall not be covered.

5.2(20) Members of any other retirement system in Iowa maintained in whole or in part by public funds shall not be covered. However, effective July 1, 1996, an employee who has two jobs, one covered by IPERS and one covered by another retirement system in Iowa, shall remain an IPERS-covered employee, unless the employee receives credit in such other retirement system for both jobs.

5.2(21) Members who are contributing to the federal civil service retirement system or federal employees retirement system shall not be covered. However, effective July 1, 1996, an employee who has two jobs, one covered by IPERS and one covered by a federal retirement system, shall be considered as an IPERS-covered employee, unless the employee receives credit in such federal retirement system for both jobs.

5.2(22) Employees of credit unions without capital stock organized and operated for mutual purposes without profit shall not be covered.

5.2(23) Members of the ministry, rabbinate or other religious order who perform full-time or part-time religious service for a covered employer shall be covered. However, members of the ministry, rabbinate or other religious order who have taken the vow of poverty may elect out of coverage.

5.2(24) Any physician, surgeon, dentist or member of other professional groups employed full-time by a covered employer shall be covered. However, any member of a professional group who performs part-time service for any public agency but whose private practice provides the major source of income shall not be covered, except for city attorneys and health officials.
5.2(25) Interns and resident doctors employed by a state or local hospital, school or institution shall not be covered.

5.2(26) Professional personnel who acquire the status of an officer of the state of Iowa or a political subdivision thereof, even though they engage in private practice and render government service only on a part-time basis, shall be covered.

5.2(27) Effective July 1, 1994, volunteer firefighters and special police officers are considered temporary employees and shall be covered if they meet the requirements of subrule 5.2(13).

5.2(28) Residents or inmates of county homes shall not be covered.

5.2(29) Members of the state transportation commission, the board of parole, and the state health facilities council shall be covered unless they elect out of coverage.

5.2(30) Employees of an interstate agency established under Iowa Code chapter 28E, and similar enabling legislation in an adjoining state, if the city had made contributions to the system for employees performing functions which are transferred to the interstate agency shall be considered employees of the city for the sole purpose of membership in IPERS, although the employer contributions for those employees are made by the interstate agency.

5.2(31) City managers, or city administrators performing the duties of city managers, under a form of city government listed in Iowa Code chapter 372 or 420 shall be covered unless they elect out of coverage.

5.2(32) Employees appointed by the state board of regents shall be covered unless they elect coverage in an alternative retirement system qualified by the state board of regents. An employee must make an election in the alternative retirement system within 60 days of the employee’s first day of employment.

5.2(33) Employees who work in additional positions with additional duties, along with normal duties with the same employer, shall be considered covered employees until all of their compensated duties to their employer cease. (Examples include teacher/coach; teacher/summer driver’s education instructor; and city employee/paid firefighter.)

5.2(34) Adjunct instructors employed by a community college or university shall not be covered. Adjunct instructors are persons employed by a community college or university without a continuing contract and whose teaching load does not exceed one-half time for two full semesters or three full quarters for the calendar year. The determination of whether a teaching load exceeds one-half time shall be based on the number of credit hours or noncredit contact hours that the community college or university considers to be a full-time teaching load for a regular full semester or quarter. An adjunct instructor whose teaching load exceeds the foregoing limitations shall be covered.

In determining whether an adjunct instructor is a covered employee, no credit shall be granted for teaching periods of shorter duration than a regular semester or regular quarter (such as summer semesters), regardless of the number of credit or contact hours assigned to that period.

If there is no formal severance, an adjunct instructor who becomes a covered employee shall remain a covered employee until that person completes four consecutive calendar quarters in which no services are performed for that covered employer after the last covered calendar quarter. Notwithstanding the foregoing sentence, no service credit will be granted to any adjunct instructor who has become a covered employee under this rule for any calendar quarter in which no covered wages are reported unless the adjunct instructor is on an approved leave of absence that qualifies for service credit under Iowa Code section 97B.1A(20).

5.2(35) Effective July 1, 1992, enrollees of a senior community service employment program authorized by Title V of the Older Americans Act and funded by the United States Department of Labor shall not be covered unless:

a. Both the enrollee and the covered employer elect coverage; or
b. The enrollee is currently contributing to IPERS.

For purposes of this subrule only, a covered employer is defined as the host agency where the enrollee is placed for training.

5.2(36) Employees of area agencies on aging shall be included. However, effective July 1, 1994, employees of area agencies on aging shall not be covered if the area agency has provided for
participation by all of its eligible employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code. If an area agency on aging does not participate in an alternative plan, or terminates participation in such plan, IPERS coverage shall begin immediately.

5.2(37) Effective July 1, 1994, arson investigators shall not be covered. They were transferred to the public safety peace officers’ retirement, accident and disability system as found in Iowa Code chapter 97A.

5.2(38) Persons who meet the requirements of independent contractor status as determined by IPERS using the criteria established by the federal Internal Revenue Service shall not be covered.

5.2(39) Effective July 1, 1994, a person employed on or after that date for certain public safety positions shall not be covered. These positions are gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities, fire prevention inspector peace officers, and employees of the division of capitol police (except clerical workers).

5.2(40) Employees of area community colleges and universities shall be covered unless they elect coverage under an alternative system pursuant to a one-time irrevocable election. An employee must make an election in the alternative retirement system within 60 days of the employee’s first day of employment.

5.2(41) Volunteer emergency personnel, such as ambulance drivers and emergency medical technicians, shall be considered temporary employees and shall be covered if they meet the requirements of subrule 5.2(13). Persons who meet such requirements shall be covered under the protection occupation requirements of Iowa Code section 97B.49B if they are considered firefighters by their employers; otherwise they shall be covered under Iowa Code section 97B.1A.

5.2(42) Persons employed through any program described in Iowa Code section 84A.7 and provided by the Iowa conservation corps shall not be covered.

5.2(43) Appointed and full-time elective members of boards and commissions who receive a set salary shall be covered. Effective January 1, 1999, part-time elective members of boards and commissions not otherwise described in these rules who receive a set salary shall be covered unless they elect out of coverage. Members of boards, other than county boards of supervisors, and commissions, including appointed and elective full-time and part-time members, who receive only per diem and expenses shall not be covered.

5.2(44) Persons receiving rehabilitation services in a community rehabilitation program, rehabilitation center, sheltered workshop, and similar organizations whose primary purpose is to provide vocational rehabilitation services to target populations shall not be covered.

5.2(45) Persons who are members of a community service program authorized under and funded by grants made pursuant to the federal National and Community Service Act of 1990 shall not be covered.

5.2(46) Persons who are employed by professional employment organizations, temporary staffing agencies, and similar noncovered employers and are leased to covered employers shall not be covered.

5.2(47) Persons who are employed by a covered employer and leased to a noncovered employer shall be covered.

5.2(48) Effective July 1, 1999, persons performing referee services for a covered employer shall not be covered, unless the performance of such services is included in the persons’ regular job duties for the employer for which such services are performed.

5.2(49) Effective July 1, 2000, patient advocates appointed under Iowa Code section 229.19 shall be covered.

5.2(50) Employees of the Iowa student loan liquidity corporation shall not be covered.

5.2(51) A citizen coach is an employee (permanent or temporary) who works for a school district in only a coaching capacity. An employer may provide a citizen coach with IPERS coverage immediately. If the employer chooses not to, then the following determination of IPERS coverage is needed:

a. If the citizen coach is expected to fill the position each season and cannot be unseated by another district employee, then the district and citizen coach have established a permanent relationship and IPERS coverage should begin once that citizen coach returns to coach a second season.
If there is no expectation of continued employment beyond the first season for the citizen coach, or if the citizen coach can be unseated by another district employee, then a temporary relationship exists and the citizen coach shall only be covered if the citizen coach meets the requirements of subrule 5.2(13).

These rules are intended to implement Iowa Code sections 97B.1A, 97B.4, 97B.42, 97B.42A, 97B.49B, 97B.49C, and 97B.49G.
CHAPTER 13
DISABILITY FOR REGULAR AND SPECIAL SERVICE MEMBERS
[Prior to 11/24/04, see 581—Ch 21]

495—13.1(97B) Disability for persons retiring under Iowa Code section 97B.50(2).

13.1(1) For IPERS members retiring because of a disability:
   a. The member must be awarded federal social security benefits due to a disability which existed on or before the member’s first month of entitlement.
   b. Effective July 1, 1990, the member may also qualify for the IPERS disability provision by being awarded, and commencing to receive, disability benefits through the federal Railroad Retirement Act, 45 U.S.C. Section 231 et seq., due to a disability which existed at the time of retirement.
   c. The period for which up to 36 months of retroactive payments under Iowa Code section 97B.50(2) shall be paid is for up to 36 months preceding the month in which such completed application for IPERS disability is received by IPERS. In no event shall retroactive disability benefits payments under Iowa Code section 97B.50(2) precede the month the member actually receives the member’s first social security or railroad retirement disability payment. The member shall provide IPERS with a copy of the Social Security Administration or railroad retirement award letter showing dates of eligibility.
   d. Continued qualification monitoring.
      (1) For a member retiring due to a disability under Iowa Code section 97B.50(2), on or after July 1, 2009, the member shall provide IPERS with proof of continuing eligibility for federal social security disability benefits or railroad retirement disability benefits by June 30 of each calendar year, in order to continue qualification for IPERS disability benefits.
      IPERS shall suspend the disability benefits of any member if the records required are not timely provided.
      (2) The annual certification of continued eligibility for federal social security disability benefits or railroad retirement disability benefits is not required as of the calendar year the member reaches normal retirement age as defined by Iowa Code section 97B.45, or for special service members aged 55, or sheriffs and deputies aged 50 with 22 years of service.

13.1(2) If a member returns to covered employment after achieving a bona fide retirement, the benefits being provided to the member under Iowa Code section 97B.50(2) “a” or “b” shall be suspended or reduced as follows. If the member has not attained the age of 55 upon reemployment, benefit payments shall be suspended in their entirety until the member subsequently terminates employment, applies for, and is approved to receive benefits under the provisions of Iowa Code chapter 97B. If the member has attained the age of 55 or older upon reemployment, the member shall continue to receive monthly benefits adjusted as follows. Monthly benefits shall be calculated under the same benefit option that was first selected, based on the member’s age, years of service, and the applicable reductions for early retirement as of the month that the member returns to covered employment. The suspension or reduction of benefits for returning to covered employment no longer applies as of the calendar year the member reaches normal retirement age, as defined by Iowa Code section 97B.45, or for special service members aged 55, or sheriffs and deputies aged 50 with 22 years of service. The member’s benefit shall also be subject to the applicable provisions of Iowa Code section 97B.48A pertaining to reemployed retired members.

13.1(3) Upon terminating a reemployment that resulted in the suspension of all or a portion of the member’s disability retirement allowance, the member’s benefits shall be recomputed under Iowa Code section 97B.48A and rule 495—12.8(97B). To requalify for a monthly retirement allowance under Iowa Code section 97B.50(2), the member must furnish a new or updated Social Security Administration disability award letter, or other acceptable documentation from the Social Security Administration, indicating that the member is currently eligible for social security disability benefits.

13.1(4) If a member whose IPERS disability benefits were suspended because of the member’s return to covered employment provides proof acceptable to IPERS that the member remains eligible for federal social security disability benefits or railroad retirement disability benefits, IPERS shall reinstate the member’s disability benefits, subject to the member’s continued compliance with paragraph 13.1(1) “d.”

[ARC 1348C, IAB 2/19/14, effective 3/26/14; ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 5027C, IAB 4/8/20, effective 5/13/20; ARC 5489C, IAB 3/10/21, effective 4/14/21]
495—13.2(97B) Disability claim process for special service members. Except as otherwise indicated, this rule shall apply only to disability claims initiated under Iowa Code section 97B.50A. Except as otherwise indicated, disability claims under Iowa Code section 97B.50(2) shall be administered under rule 495—13.1(97B).

13.2(1) Initiation of disability claim. The disability claim process shall originate as an application to the system by the member. The application shall be forwarded to the system’s designated retirement benefits officer. An application shall be sent upon request to members who qualify pursuant to Iowa Code section 97B.50A(13). The application consists of the following sections which must be completed and returned to the system’s designated retirement benefits officer:

1. General applicant information.
2. Applicant’s statement.
3. Employer’s statement.
4. Member’s assigned duties.
5. Disability/injury reports.
6. Medical information release.

13.2(2) Preliminary processing. Completed forms shall be returned to the disability retirement benefits officer. If the forms are not complete, they will be returned for completion. The application package shall contain copies of all relevant medical records and the names, addresses, and telephone numbers of all relevant physicians. If medical records are not included, the designated retirement benefits officer shall have the authority to contact the listed physicians for copies of the files on the individual and shall request that any applicable files be sent to the medical board. In addition, IPERS may request workers’ compensation records, social security records and such other official records as are deemed necessary. The application, including copies of the medical information, shall be forwarded to the medical board for review. All medical records that will be part of a member’s permanent file shall be kept in locked locations separate from the member’s other retirement records.

13.2(3) Scheduling of appointments. Upon receipt and forwarding of the application and sufficient medical records to the medical board, the disability retirement benefits officer shall establish an appointment for the applicant to be seen by the medical board in Iowa City. The member shall be notified in writing of the appointment and shall be given general instructions about where to go for the examinations. The appointment for the examinations shall be no later than 60 days after the completed application, including sufficient medical records, is provided. The member shall also be notified about the procedures to follow for reimbursement of travel expenses and lodging. Fees for physical examinations and medical records costs shall be paid directly by IPERS pursuant to its contractual arrangements with the medical providers required to implement Iowa Code section 97B.50A.

13.2(4) Medical board examinations. The medical board, consisting of three physicians from the University of Iowa occupational medicine clinic and other departments as required, shall examine the member and perform the relevant tests and examinations.

The medical board shall submit a letter of recommendation to the system, based on its findings and the job duties supplied in the member’s application, whether or not the member is mentally or physically incapacitated from the further performance of the member’s duties and whether or not the incapacity is likely to be permanent. “Permanent” means that the mental or physical incapacity is reasonably expected to last more than one year. The medical board’s letter of recommendation shall include a recommended schedule for reexaminations to determine the continued existence of the disability in question.

IPERS shall not be liable for any diagnostic testing procedures performed in accordance with Iowa Code section 97B.50A and this rule which are alleged to have resulted in injury to the members being examined.

The medical board shall furnish its determination, test results, and supporting notes to the system no later than ten working days after the date of the examination. The medical board may use electronic signatures in fulfilling its reporting obligations under this rule.

The medical board shall not be required to have regular meetings, but shall be required to meet with IPERS’ representatives at reasonable intervals to discuss the implementation of the program and performance review.
13.2(5) **Member and employer comments.** Upon receipt by the system, the medical board’s determination regarding the existence or nonexistence of a permanent disability shall be distributed to the member and to the employer for review. The member and the employer may forward to the system written statements pertaining to the medical board’s findings within ten days of transmittal. If relevant medical information not considered in materials previously forwarded to the medical board is contained within such written statements, the system shall submit such information to the medical board for review and comment.

13.2(6) **Fast-track review.** IPERS’ disability retirement benefits officer may refer any case to IPERS’ chief benefits officer (CBO) for fast-track review. The CBO or the CBO’s designee may, based upon a review of the member’s application and medical records, determine that the medical board be permitted to make its recommendations based solely upon a review of the application and medical records, without requiring the member to submit to additional medical examinations by, or coordinated through, the medical board.

13.2(7) **Initial administrative determination.** The medical board’s letter of recommendation, test results, and supporting notes, and the member’s file shall be forwarded to IPERS. Except as otherwise requested by IPERS, the medical board shall forward hospital discharge summary reports rather than the entire set of hospital records. The complete file shall be reviewed by the system’s disability retirement benefits officer, who shall, in consultation with the system’s legal counsel, make the initial disability determination. Written notification of the initial disability determination shall be sent to the member and the member’s employer within 14 business days after a complete file has been returned to IPERS for the initial disability determination.

13.2(8) **General benefits provisions.** Effective July 1, 2000, if an initial disability determination is favorable, benefits shall begin as of the date of the initial disability determination or, if earlier, the member’s last day on the payroll, but no more than six months of retroactive benefits are payable, subject to Iowa Code section 97B.50A(13). “Last day on the payroll” shall include any form of authorized leave time, whether paid or unpaid. If a member receives short-term disability benefits from the employer while awaiting a disability determination hereunder, disability benefits will accrue from the date the member’s short-term disability payments are discontinued. If an initial favorable determination is appealed, the member shall continue to receive payments pending the outcome of the appeal.

Any member who is awarded disability benefits under Iowa Code section 97B.50A and this rule shall be eligible to elect any of the benefit options available under Iowa Code section 97B.51. All such options shall be the actuarial equivalent of the lifetime monthly benefit provided in Iowa Code section 97B.50A(2) and (3).

The disability benefits established under this subrule shall be eligible for the favorable experience dividends payable under Iowa Code section 97B.49F(2).

If the award of disability benefits is overturned upon appeal, the member may be required to repay the amount already received or, upon retirement, have payments suspended or reduced until the appropriate amount is recovered.

13.2(9) **In-service disability determinations.** Subject to the presumptions contained in Iowa Code section 97B.50A in determining whether a member’s mental or physical incapacity arises in the actual performance of duty, “duty” shall mean:

a. For special service members other than firefighters, any action that the member, in the member’s capacity as a law enforcement officer:
   (1) Is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
   (2) Performs in the course of controlling or reducing crime or enforcing the criminal law; or

b. For firefighters, any action that the member, in the member’s capacity as a firefighter:
   (1) Is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
   (2) Performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene.
c. A presumption shall exist that a special service member contracted a disease while on active duty only if the disease is defined by Iowa Code section 97B.50A(2) "c" as amended by 2010 Iowa Acts, House File 2518, section 31. If a presumption exists, IPERS may, in making its determination as to whether a disability was incurred while the member was on active duty, go forward with evidence to rebut the presumption. IPERS can rebut the presumption when credible evidence exists to the contrary or when the requirements are met in Iowa Code section 97B.50A(2) "c" as amended by 2010 Iowa Acts, House File 2518, section 31. Under no circumstances shall the burden of proof shift from the special service member to IPERS.

13.2(10) Appeal rights. The member or the employer, or both, may appeal IPERS’ initial disability determination. Within 30 days after the notification of IPERS’ initial disability determination was mailed, the member shall submit to IPERS’ CEO or CEO’s designee a notice of appeal in writing setting forth:

a. The name, address, and social security number of the member or employee number of the employer;
b. A reference to the decision from which the appeal is being made;
c. The fact that an appeal from the decision is being made;
d. The grounds upon which the appeal is based;
e. Additional medical or other evidence to support the appeal; and
f. The request that a different decision be made by IPERS.

The system shall conduct an internal review of the initial disability determination, and the CEO or CEO’s designee shall notify in writing the party who filed the appeal of IPERS’ final disability determination with respect to the appeal. The CEO or CEO’s designee may appoint a review committee to make nonbinding recommendations on such appeals. The disability retirement benefits officer, if named to the review committee, shall not vote on any such recommendations, nor shall any members of IPERS’ legal staff participate in any capacity other than a nonvoting capacity. Further appeals shall follow the procedures set forth in 495—Chapter 26.

13.2(11) Notice of abuse of disability benefits. The system has the obligation and full authority to investigate allegations of abuse of disability benefits. The system, in its sole discretion, may initiate investigations in the absence of a complaint. The scope of the investigation to be conducted shall be determined by the system and may include the ordering of a sub rosa investigation of a disability recipient to verify the facts relating to an alleged abuse. A sub rosa investigation shall only be considered upon receipt and evaluation of an acceptable notice of abuse. The notification must be in writing and include:

a. The informant’s name, address, telephone number, and relationship to the disability recipient; and
b. A statement pertaining to the circumstances that prompted the notification, such as activities which the informant believes are inconsistent with the alleged disability.
c. Anonymous calls shall not constitute acceptable notification.

IPERS may employ such investigators and other personnel, in IPERS’ sole discretion, as may be deemed necessary. IPERS may also, in its sole discretion, decline to carry out such investigations if more than five years have elapsed since the date of the disability determination.

13.2(12) Qualification for social security or railroad retirement disability benefits. Upon qualifying for social security or railroad retirement disability benefits, a special service member may contact the system to have the member’s disability benefits calculated under Iowa Code section 97B.50(2). The member and spouse must complete the designated application to stop having benefits calculated under Iowa Code section 97B.50A and to start having benefits calculated under Iowa Code section 97B.50(2). The decision is irrevocable, and must be made within 60 days after the member receives written notification of eligibility for disability benefits from social security or railroad retirement and has commenced receiving such payments.

13.2(13) Reemployment/income monitoring. A member who retires under Iowa Code section 97B.50A and this rule shall be required to supply a copy of a complete set of the member’s state and federal income tax returns, including all supporting schedules, by June 30 of each calendar year, in order to continue qualification for IPERS special service disability benefits. IPERS may suspend the
benefits of any such member if such records are not timely provided. This subrule does not apply to a member who is at least 55 years of age and would have completed 22 years of service if the member had remained in active special service employment.

Only wages and self-employment income shall be counted in determining a member’s reemployment comparison amount, as adjusted for health care coverage for the member and member’s dependents.

13.2(14) Offset to allowance. A member who retires under Iowa Code section 97B.50A shall have benefits reduced by other disability-related payments the member receives for the same disability, including, but not limited to, benefits from:

   a. Social security.
   b. Long-term disability insurance.
   c. Workers’ compensation, subject to the limitations set forth in Iowa Code section 97B.50A(5) "b" and "c."
   d. Unemployment insurance.
   e. Employer-paid disability plans, programs, or policies.
   f. Other laws.

For purposes of calculating the income offsets required under Iowa Code section 97B.50A, IPERS shall convert any lump sum workers’ compensation award, disability insurance payments, or similar lump sum awards for the same illnesses or injuries to an actuarial equivalent, as determined by IPERS. IPERS shall convert any monthly, weekly, or other stated period workers’ compensation award, disability insurance payments, or other awards for the same illnesses or injuries, dollar-for-dollar, to the same monthly, weekly, or other stated period, as determined by IPERS.

[ARC 8929B, IAB 7/14/10, effective 6/21/10; ARC 9068B, IAB 9/8/10, effective 10/13/10; ARC 0662C, IAB 4/3/13, effective 5/8/13; ARC 2402C, IAB 2/17/16, effective 3/23/16; ARC 5027C, IAB 4/8/20, effective 5/13/20; ARC 6215C, IAB 2/23/22, effective 3/30/22]

These rules are intended to implement Iowa Code sections 97B.50 and 97B.50A.

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CHAPTER 14
DEATH BENEFITS AND BENEFICIARIES
[Prior to 11/24/04, see 581—Ch 21]

495—14.1(97B) Internal Revenue Code limitations. The death benefits payable under Iowa Code sections 97B.51 and 97B.52 shall not exceed the maximum amount possible under Internal Revenue Code Section 401(a)(9).

To ensure that the limit is not exceeded, a member’s combined lump sum death benefit under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed 100 times the Option 2 amount that would have been payable to the member at the member’s earliest normal retirement age. If a beneficiary of a special service member is eligible for an in-the-line-of-duty death benefit, any reduction required under this rule shall be taken first from a death benefit payable under Iowa Code section 97B.52(1). The “100 times” limit shall apply to active and inactive members. The death benefits payable under this chapter for a period of reemployment for a retired reemployed member who dies during the period of reemployment shall also be subject to the limits described in this rule.

The maximum claims period for IPERS lump sum death benefits shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for a member who dies after the member’s required beginning date, unless the beneficiary is a spouse. The claims period for all cases in which the member’s death occurs during the same calendar year in which a claim must be filed under this rule shall end April 1 of the year following the year of the member’s death.

A member’s beneficiary or heir may file a claim for previously forfeited death benefits. Interest, if any, for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. Interest for periods following the quarter of forfeiture will accrue beginning with the quarter that the claim for reinstatement is received by IPERS. For death benefits required to be forfeited in order to satisfy Section 401(a)(9) of the federal Internal Revenue Code, in no event will the forfeiture date precede January 1, 1988. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

Effective January 14, 2004, all claims for a previously forfeited death benefit shall be processed under the procedure set forth at rule 495—14.6(97B).

The system recognizes the validity of same gender marriages executed in Iowa on or after April 27, 2009, if the domestic relations order or other assignment otherwise meets the system’s minimum requirements for such orders; the system shall modify the tax treatment of distributions under such orders as required by the federal laws governing such distributions. IPERS shall adopt such rules and procedures as are deemed necessary to fully implement the provisions of this rule. The Iowa Supreme Court decision recognizing same gender marriages in Iowa specifically states that this recognition does not extend to same gender marriages of other states. The system recognizes the validity of same gender marriages based on the U.S. Supreme Court’s decision in United States v. Windsor, 133 S.Ct. 2675 (2013) and the direction of Rev. Rul. 2013-17 and IRS Notice 2014-19. IPERS shall recognize the federal tax treatment of distributions as required by the sources listed in this paragraph.
[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 1348C, IAB 2/19/14, effective 3/26/14; ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 5027C, IAB 4/8/20, effective 5/13/20]

495—14.2(97B) Survival into first month of entitlement. When a member who has filed an application for retirement benefits and has survived into the first month of entitlement dies prior to the issuance of the first benefit check, IPERS will pay the death benefit allowed under the retirement option elected by the member in the application for retirement benefits.

495—14.3(97B) Designation of beneficiaries.

14.3(1) Designation of beneficiaries. To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. Members may also designate their beneficiary through the IPERS website. The designation of a beneficiary by a retiring member on the application for monthly benefits revokes all prior designation of beneficiary forms. IPERS may consider as valid a designation of beneficiary form filed with the member’s employer prior to
the death of the member, even if that form was not forwarded to IPERS prior to the member’s death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 or 6 retired member may name someone other than the member’s contingent annuitant as beneficiary, but only for lump sum death benefits accrued during the period of reemployment and only if the contingent annuitant has died or has been divorced from the member before or during the period of reemployment unless a qualified domestic relations order (QDRO) directs otherwise. If a reemployed IPERS Option 4 or 6 retired member dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member’s contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the lump sum death benefits awarded in a QDRO shall be paid to the contingent annuitant as alternate payee, and the remainder of the lump sum death benefits shall be paid to the member’s estate or, if applicable, to the member’s heirs if no estate is probated. A funeral home shall not be designated as a beneficiary.

14.3(2) Deceased beneficiary. If a named beneficiary predeceased the member, that beneficiary’s share shall be paid to the surviving named beneficiaries in equal shares.

14.3(3) Change of beneficiary. The beneficiary may be changed by the member by filing a new designation of beneficiary form with IPERS. Members may also change their beneficiary through the IPERS website. The latest dated designation of beneficiary form on file shall determine the identity of the beneficiary. Payment of a refund to a terminated member cancels the designation of beneficiary on file with IPERS.

14.3(4) Spousal signature. If the member designates someone other than a spouse as the sole primary beneficiary, the beneficiary designation form must contain a spousal signature, pursuant to Iowa Code section 97B.44. If a member’s spouse cannot be located, the spousal signature requirement may be waived upon receipt of the notarized form specified by IPERS.

[ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 2981C, IAB 3/15/17, effective 4/19/17; ARC 4337C, IAB 3/13/19, effective 4/17/19; ARC 5027C, IAB 4/8/20, effective 5/13/20; ARC 5409C, IAB 3/10/21, effective 4/14/21]

495—14.4(97B) Applications for death benefits. Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member’s death certificate, or if a death certificate cannot be obtained, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, bureau of health statistics, IPERS’ own internal records, or reports derived from other public records, and other governmental records to which IPERS may have access together with information establishing the claimant’s right to payment. A named beneficiary must complete an IPERS application for death benefits based on the deceased member’s account. If the claimant’s claim is based on dissolution of marriage that revoked the IPERS beneficiary designation, the claim must be processed pursuant to rule 495—14.16(97B).


495—14.5(97B) Commuted lump sums.

14.5(1) Designated beneficiary is an estate, trust, church, charity, or similar organization. Where the designated beneficiary is an estate, trust, church, charity or similar organization, or is a person, such as a trustee, executor, or administrator who has been appointed to receive funds on behalf of such entities, payment of benefits shall be made in a lump sum only.

14.5(2) Multiple beneficiaries. Where multiple beneficiaries have been designated by the member, payment, including the payment of the remainder of a series of guaranteed annuity payments, shall be made in a lump sum only. The lump sum payment shall be paid to the multiple beneficiaries in equal shares.

14.5(3) Guaranteed payments. Where a member has selected Option 5 and dies before receiving all guaranteed payments, and the member’s designated beneficiary also dies before all guaranteed payments are made, any remaining guaranteed payments shall be paid in a commuted lump sum.

[ARC 8929B, IAB 7/14/10, effective 6/21/10; ARC 9068B, IAB 9/8/10, effective 10/13/10]
495—14.6(97B) Payment of the death benefit when no designation of beneficiary or an invalid designation of beneficiary form is on file. When no designation of beneficiary or an invalid designation of beneficiary form is on file with IPERS, payment shall be made in one of the following ways.

14.6(1) Where the estate is open, payment shall be made to the administrator or executor where said executor or administrator shall be duly appointed and serving under Iowa Code chapter 633 or 635.

14.6(2) Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits, payment will be made in accordance with the intestacy laws of the state of Iowa. If someone other than those identified pursuant to the intestacy laws of the state of Iowa claims entitlement to a death benefit, an estate must be opened and the death benefit shall be payable to the administrator or executor of the estate.

[ARC 5027C, IAB 4/8/20, effective 5/13/20]

495—14.7(97B) Waiver of beneficiary rights. A named beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would have been entitled. The waiver of the rights shall occur prior to the receipt of a payment from IPERS to the beneficiary. The waiver of rights shall be binding and will be executed on a form provided by IPERS. The waiver of rights may be general, in which case payment shall be divided equally among all remaining designated beneficiaries or, if there are none, to the member’s estate. The waiver of rights may also expressly be made in favor of one or more of the member’s designated beneficiaries or the member’s estate. If the waiver of rights operates in favor of the member’s estate and no estate is probated or claim made, or if the executor or administrator expressly waives payment to the estate, payment shall be paid to the member’s surviving spouse unless there is no surviving spouse or the surviving spouse has waived the surviving spouse’s rights. In that case, payment shall be made to the member’s heirs excluding any person who waived the right to payment. Any waiver filed by an executor, administrator, or other fiduciary must be accompanied by a release acceptable to IPERS indemnifying IPERS from all liability to beneficiaries, heirs, or other claimants for any waiver executed by an executor, administrator, or other fiduciary.

495—14.8(97B) Beneficiaries under the age of 18. Payment may be made to a conservator if the beneficiary is under the age of 18 and the total dollar amount to be paid by IPERS to a single beneficiary is $25,000 or more. Payment may be made to a custodian if the total dollar amount to be paid by IPERS to a single beneficiary is less than $25,000.

495—14.9(97B) Simultaneous deaths. IPERS will apply the provisions of the Uniform Simultaneous Death Act, Iowa Code sections 633.523 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

495—14.10(97B) Felonious deaths. IPERS will apply the provisions of the Felonious Death Act, Iowa Code sections 633.535 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

495—14.11(97B) No interest on postretirement death benefits. Interest is only accrued on a member’s death benefit if the member dies before the member’s first month of entitlement (FME) or, for a retired reemployed member, before the member’s reemployment FME, and is only accrued with respect to the retired or retired reemployed member’s accumulated contributions account.

495—14.12(97B) Preretirement death benefits.

14.12(1) Death prior to first month of entitlement. Where an active member, or an inactive member vested by service, dies prior to the first month of entitlement, the lump sum death benefit shall be the greater of the amount provided in subrule 14.12(3) or 14.12(4). Sole beneficiaries may elect, in lieu of the lump sum amount, to receive a single life annuity that is the actuarial equivalent of such lump sum amount. Where an inactive member, not vested by service, dies prior to the first month of entitlement, the lump sum death benefit shall be as provided in subrule 14.12(7).

14.12(2) Death benefits under Iowa Code section 97B.52(1).
a. **Definitions.**

“Accrued benefit” means the monthly amount that would have been payable to the deceased member under IPERS Option 2 at the member’s earliest normal retirement age, based on the member’s covered wages and service credits at the date of death. If a deceased member’s wage record consists of a combination of regular and special service credits, the monthly amount that would have been payable to the deceased member under Option 2 at the member’s earliest normal retirement age shall be determined separately for regular and special service credits, and then combined.

“Nearest age” means a member’s or beneficiary’s age expressed in whole years, after rounding for partial years of age. Ages shall be rounded down to the nearest whole year if less than six complete months have passed following the month of the member’s or beneficiary’s last birthday, and shall be rounded up if six complete months or more have passed following the month of the member’s or beneficiary’s last birthday.

b. **Process for applying.**

(1) A claim for a single life annuity under this subrule must be filed as follows:

1. A nonspouse beneficiary must file a claim for a single life annuity within 12 months of the member’s death.

2. A beneficiary who is a surviving spouse must file a claim for a single life annuity within 12 months of the member’s death, or by the date that the member would have attained the age of 72, whichever period is later.

(2) Elections to receive the lump sum amount or single life annuity shall be irrevocable once the first payment is made.

(3) No further benefits will be payable following the death of any beneficiary who qualifies and elects to receive the single life annuity provided under this subrule.

(4) The provisions of this subrule shall not apply to members who died before January 1, 2001.

**14.12(3) Accumulated contributions lump sum benefit.** An accumulated contribution lump sum death benefit is equal to the accumulated contributions of the member plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the “applicable denominator,” as provided in Iowa Code section 97B.52(1). The calculation of the highest year of covered wages shall use the highest calendar year of covered wages reported to IPERS.

**14.12(4) Present value lump sum.** A lump sum death benefit equal to the present value of the member’s accrued benefit is calculated as follows:

a. IPERS shall calculate a member’s retirement benefit at earliest normal retirement age under IPERS Option 2, based on the member’s covered wages and service credits at the date of death and the retirement benefit formula in effect in the month following the date of death.

b. For purposes of determining the “member date of death annuity factor” under the conversion tables supplied by IPERS’ actuary, IPERS shall assume that “age” means the member’s nearest age at the member’s date of death.

c. For purposes of determining the “member unreduced retirement annuity factor” under the conversion tables supplied by IPERS’ actuary, IPERS shall assume that “age” means the member’s nearest age at the member’s earliest normal retirement date. If a member had already attained the member’s earliest normal retirement date, IPERS shall assume that “age” means the member’s nearest age at the date of death.

**14.12(5) Single life annuity benefit.** Procedures and assumptions for converting the actuarial equivalent of a lump sum death benefit to a single life annuity are as follows:

a. For purposes of determining the “age of beneficiary annuity factor” under the conversion tables supplied by IPERS’ actuary, IPERS shall assume that “age” means the beneficiary’s nearest age as of the beneficiary’s first month of entitlement.

b. A beneficiary’s first month of entitlement is the month after the date of the member’s death.

c. Effective for claims filed after June 30, 2004, no retroactive payments of the single life annuity shall be made under this subrule.
d. Effective for claims filed after June 30, 2004, the beneficiary whose single life annuity is less than $600 per year shall be able to receive only the lump sum payment under this rule.

e. Any sole beneficiary who is eligible for and elects to receive a single life annuity under this subrule shall also qualify for the favorable experience dividend (FED) payments authorized under rule 495—15.2(97B), subject to the requirements of that rule.

14.12(6) Retired reemployed members and aged 70 members who retire without terminating employment. Preretirement death benefits for retired reemployed members and aged 70 members who retire without terminating employment shall be calculated as follows:

a. For beneficiaries of such members who elect IPERS Option 4 or 6 at retirement, IPERS shall recompute (for retired reemployed members) or recalculate/recompute (for aged 70 members who retired without terminating employment) the member’s monthly benefits as though the member had elected to terminate employment as of the date of death, to have the member’s benefits adjusted for postretirement wages, and then lived into the recomputation or recalculation/recomputation (as applicable) first month of entitlement.

b. The recomputation provided under paragraph 14.12(6)“a” shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member’s monthly benefit would have been increased by the period of reemployment, and is subject to the limitations of Iowa Code sections 97B.48A, 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. The recalculation/recomputations provided under paragraph 14.12(6)“a” shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member’s monthly benefit would have been increased by the period of employment after the initial retirement, and is subject to the limitations of Iowa Code sections 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. In all other cases, including cases where members previously received a lump sum payment under Iowa Code section 97B.48(1) in lieu of a monthly retirement allowance, preretirement death benefits under this paragraph shall be the lump sum amount equal to the accumulated employee and accumulated employer contributions.

c. Beneficiaries of members who had elected IPERS Option 4 or 6 may also elect to receive the accumulated employer and accumulated employee contributions described in paragraph 14.12(6)“b” in lieu of the increased monthly annuity amount. Notwithstanding paragraph 14.12(6)“b” above, if the member elected IPERS Option 5 at retirement, the lump sum amount payable under this paragraph shall be the greater of the applicable commuted lump sum or the accumulated employee and accumulated employer contributions.

14.12(7) Inactive member, not vested by service death benefit.

a. For deaths occurring after June 30, 2004, and before July 1, 2012, for inactive members who have less than 16 quarters of service credit, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)“a,” and shall only be payable in lump sum amounts. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

b. For deaths occurring after June 30, 2012, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)“a,” and shall only be payable in lump sum amounts for inactive members who are not vested by service. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

[ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 2402C, IAB 2/17/16, effective 3/23/16; ARC 5027C, IAB 4/8/20, effective 5/13/20]

495—14.13(97B) Procedures for deaths of certain voluntary emergency services personnel occurring in the line of duty. Effective July 1, 2006, for a member who dies while performing the functions of a voluntary emergency services provider as described under Iowa Code section 85.61 or 147A.1, benefits for deaths occurring in the line of duty shall be paid pursuant to Iowa Code section 100B.31.

[ARC 5027C, IAB 4/8/20, effective 5/13/20]

495—14.14(97B) Rollovers by nonspouse beneficiaries. Effective January 1, 2007, nonspouse beneficiaries shall be permitted to request a direct rollover of such beneficiaries’ death benefit payments to traditional IRA accounts established in accordance with Section 829 of the Pension Protection Act
14.16(1) The RMD for a member who retired under an option with a lump sum death benefit and died after the member’s required beginning date (RBD) is calculated as follows:

   a. Step 1. Determine the number of payments remaining for the calendar year in which the member died. The current month’s payment is not used in this calculation.

   b. Step 2. Multiply the number of remaining payments determined in Step 1 by the gross amount of the member’s last monthly payment to get the RMD amount. If the lump sum death benefit is less than the RMD, then the RMD is the lump sum death benefit amount.

   c. Step 3. Determine the total non-RMD amount by subtracting the RMD as determined in Step 2 from the lump sum death benefit.

   d. The eligible rollover amount is the total non-RMD amount as determined in Step 3.

14.15(2) In order to allocate nontaxable amounts between RMD and non-RMD, the calculation is performed as follows:

   a. Nontaxable amounts are allocated first to the RMD portion of the lump sum death benefit.

   b. If the nontaxable amounts are greater than the RMD amount, the remaining nontaxable amounts are allocated to the non-RMD portion of the lump sum amount.

   c. If the nontaxable amounts are less than the RMD amount, the remaining portion of the RMD amount is composed of taxable amounts.

495—14.16(97B) Beneficiary revocation pursuant to Iowa Code section 598.20B, dissolution of marriage. IPERS is not liable for the payment of death benefits to a beneficiary pursuant to a beneficiary designation that has been revoked or reinstated by a divorce, annulment, or remarriage before IPERS receives the written notice set forth in subrule 14.16(1). Furthermore, IPERS shall only be liable for payments made after receipt of such written notice if the written notice is received at least ten calendar days prior to the payment.

14.16(1) Form of notice. The written notice shall include the following information:

   a. The name of the deceased member,

   b. The name of the person(s) whose entitlement to IPERS death benefits is being challenged,

   c. The name, address, and telephone number of the person(s) asserting an interest,

   d. A statement that the decedent’s divorce, annulment, or remarriage revoked the entitlement of the person(s) whose status is being challenged to the IPERS death benefits in question, and

   e. A copy of the divorce decree upon which the claim is based.

In addition to the above information, if the person whose entitlement is being challenged is not the former spouse, the written notice must indicate that the person was related to the former spouse, but not the member, by blood, adoption or affinity, and state the nature of the relationship.

14.16(2) Delivery of notice. Written notice under this rule must be addressed to IPERS General Counsel and mailed to IPERS by registered mail or served upon IPERS in the same manner as a summons in a civil action.

14.16(3) Administration. Upon receipt of written notice that meets the requirements of subrules 14.16(1) and 14.16(2):
a. IPERS shall review the deceased member’s account and determine if there are moneys left to be distributed from the account.

b. IPERS shall pay the amounts owed, if any, to the probate court having jurisdiction over the decedent’s estate, if the deceased member has an open estate.

c. IPERS shall pay the amounts owed, if any, to the probate court that had or would have had jurisdiction over the decedent’s estate, if the deceased member’s estate is closed or an estate was not opened.

d. As IPERS makes applicable payments, a copy of the written notice received by IPERS shall be filed with the probate court.

If the probate court charges a filing fee for the deposit of amounts payable hereunder, IPERS shall deduct such filing fees and other court costs from the amounts payable prior to transfer. The probate court shall hold the funds and, upon its determination, shall order disbursement or transfer in accordance with the determination. Additional filing fees and court costs, if any, shall be charged upon disbursement either to the recipient or against the funds on deposit with the probate court, in the discretion of the court.

14.16(4) Release of claims. Payments made to a probate court under this rule shall discharge IPERS from all claims by all persons for the value of amounts paid the court.

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 8929B, IAB 7/14/10, effective 6/21/10; ARC 9068B, IAB 9/8/10, effective 10/13/10; ARC 5027C, IAB 4/8/20, effective 5/13/20]

495—14.17(97B) Procedures for final distribution to heirs who have filed claims. If a claimant has identified other persons in the claimant’s group who would be entitled to a share of the member’s death benefit, but such persons have not filed a claim within five years after the member’s death, or by the date required under IRC Section 401(a)(9) if earlier, the remainder of the member’s death benefit shall be paid in pro rata shares to the claimants who were previously paid a share of the death benefit. In order to comply with the applicable IRS limitations, the final payments under this rule shall be made by December 31 of the fifth year that begins after the member’s date of death, or by December 31 of the year that distribution is required under IRC Section 401(a)(9), if earlier. The sole recourse of any claimant who is a member of a group receiving payments hereunder or of any lower-numbered group that should have received all of such payments shall be against the claimants of the group that received death benefit payments.

This rule is intended to implement Iowa Code sections 97B.44 and 97B.52.

[ARC 6215C, IAB 2/23/22, effective 3/30/22]

These rules are intended to implement Iowa Code sections 97B.1A(8), 97B.1A(18), 97B.1A(19), 97B.34, 97B.34A, 97B.44, 97B.52 and 97B.53B and 2000 Iowa Acts, chapter 1077, section 75.

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CHAPTER 16
DOMESTIC RELATIONS ORDERS AND OTHER ASSIGNMENTS
[Prior to 11/24/04, see 581—Ch 21]

495—16.1(97B) Garnishments and income withholding orders.

16.1(1) For the limited purposes of this rule, the term “member” includes IPERS members, beneficiaries, contingent annuitants and any other third-party payees to whom IPERS is paying a monthly benefit or a lump sum distribution.

16.1(2) A member’s right to any payment from IPERS is not transferable or assignable and is not subject to execution, levy, attachment, garnishment, or other legal process, including bankruptcy or insolvency law, except for the purpose of enforcing child, spousal, or medical support.

16.1(3) Only members receiving payment from IPERS, including monthly benefits and lump sum distributions, may be subject to garnishment, attachment, or execution against funds that are payable. Such garnishment, attachment, or execution is not valid and enforceable for members who have not applied for and have not been approved to receive funds from IPERS.

16.1(4) Upon receipt of an income withholding order issued by the Iowa department of human services or a court, IPERS shall send a copy of the withholding order to the member. If a garnishment has been issued by a court, the party pursuing the garnishment shall send a notice pursuant to Iowa law to the member against whom the garnishment is issued.

16.1(5) IPERS shall continue to withhold a portion of the member’s monthly benefit as specified in the initial withholding order until instructed by the court or the Iowa department of human services issuing the order to amend or cease payment. IPERS shall continue to withhold a portion of the member’s monthly benefit as specified in the garnishment until the garnishment expires or is released.

16.1(6) Funds withheld or garnished are taxable to the member. IPERS may assess a fee of $2 per payment in accordance with Iowa Code section 252D.18A(2). The fee will be deducted from the gross amount, less federal and state income tax, before a distribution is divided.

16.1(7) A garnishment, attachment or execution may not be levied upon funds which are already the subject of a levy, including a levy placed upon funds by the United States Internal Revenue Service, unless the requirements of IRC Section 6334(a)(8) are met. Multiple garnishments, attachments and executions are allowed as long as the amount levied upon does not exceed the limitations prescribed in 15 U.S.C. Section 1673(b).

16.1(8) IPERS may release information relating to entitlement to funds to a court or to the Iowa department of human services prior to receipt of a valid garnishment, attachment, execution, or income withholding order when presented with a written request stating the information requested and reasons for the request. This request must be signed by a magistrate, judge, or child support recovery unit director or the director’s designee, including an attorney representing the Iowa department of human services. In addition, IPERS may release information to the Iowa department of human services through automated matches.

495—16.2(97B) Domestic relations orders. This rule shall apply only to marital property orders. All support orders shall continue to be administered under rule 495—16.1(97B).

16.2(1) Definitions.

“Alternate payee” means a spouse or former spouse, regardless of gender, of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by IPERS with respect to such member.

“Benefits” means, for purposes of this rule and depending on the context, a refund, monthly allowance (including monthly allowance paid as an actuarial equivalent (AE)), or death benefit payable with respect to a member covered under IPERS. “Benefits” does not include dividends payable under Iowa Code section 97B.49 or other cost-of-living increases unless specifically provided for in a QDRO.

“Domestic relations order” means any judgment, decree, or order which relates to the provision of marital property rights to a spouse or former spouse, regardless of gender, of a member and is made pursuant to the domestic relations laws of a state.
“Member” means, for purposes of this rule, IPERS members, beneficiaries, and contingent annuitants.

“Qualified domestic relations order” or “QDRO” means a domestic relations order that divides the marital property of former spouses and assigns to a former spouse alternate payee the right to receive all or a portion of the benefits payable with respect to a member under IPERS and meets the requirements of this rule.

“Successor alternate payee” means a person or persons named in a domestic relations order prior to July 1, 2019, to receive the amounts payable to the former spouse alternate payee under the QDRO if the alternate payee dies before the member. Successor alternate payees must be named individuals, not a class of individuals, a trust or an estate.

“Trigger event” means a distribution or series of distributions of benefits made with respect to a member.

16.2(2) Requirements.
   a. Mandatory provisions. A domestic relations order is a QDRO if such order:
      (1) Clearly specifies the member’s name and last-known mailing address, member identification number or social security number, and the names and last-known mailing addresses and social security numbers of alternate payees. This information shall be provided to IPERS on IPERS’ Confidential Information form;
      (2) Clearly specifies a fixed dollar amount or a percentage, but not both, of the member’s benefits to be paid by IPERS to the alternate payee or the manner in which the fixed dollar amount or percentage is to be determined, provided that no such method shall require IPERS to perform present value calculations of the member’s accrued benefit;
      (3) Clearly specifies the period to which such order applies;
      (4) Clearly specifies that the order applies to IPERS;
      (5) Clearly specifies that the order is for purposes of making a property division;
      (6) Conforms IPERS with IRS reporting requirements for distributions to successor alternate payees. Prior to July 1, 2019, the taxable portion and basis will be prorated to each respective recipient if the payee is the alternate payee. If the payee is a successor alternate payee, the taxable portion and basis will be borne by the member, pursuant to IRC Pub. L. 99-514, 100 Stat. 2085, enacted October 22, 1986. Effective July 1, 2019, a domestic relations order must conform IPERS with IRS reporting requirements for distributions to alternate payees. The taxable portion and basis will be prorated to each respective recipient; and
      (7) Is clearly signed by the judge and filed with the clerk of court. IPERS will consider an order duly signed if it carries an original signature, a stamp bearing the judge’s signature, an electronic clerk-of-court stamp and judge’s signature page via the electronic data management system (EDMS) or is conformed in accordance with local court rules.
   b. Prohibited provisions. A domestic relations order is not a QDRO if such order:
      (1) Requires IPERS to provide any type or form of benefit or any option not otherwise provided under Iowa Code chapter 97B;
      (2) Requires IPERS to provide increased benefits determined on the basis of actuarial value;
      (3) Requires the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined by IPERS to be a QDRO;
      (4) Requires any action by IPERS that is contrary to its governing statutes or plan provisions;
      (5) Awards any future benefit increases that are provided by the legislature, except as provided in subparagraph 16.2(2)“c”(2);
      (6) Requires the payment of benefits to an alternate payee prior to a trigger event; or
      (7) Appoints a successor alternate payee after June 30, 2019.
   c. Permitted provisions. A QDRO may also:
      (1) If a trigger event has not occurred as of the date the order is received by IPERS, name an alternate payee as a designated beneficiary or contingent annuitant or require the payment of benefits under a particular benefit option, or both;
(2) Specify that the alternate payee shall be entitled to a fixed dollar amount or percentage of dividend payments, or cost-of-living increase or any other postretirement benefit increase to the member (all known as dividend payments), as follows:

1. If the court order awards a fixed dollar amount of benefits to the alternate payee, the dollar amount of dividend payments to be added or method for determining the dollar amount shall be stated in the court order or an award of a share of dividend payments shall be given no effect; and

2. If the court order awards a specified percentage of benefits to the alternate payee, IPERS shall add dividends to the alternate payee’s share of the retirement allowance as necessary to keep the alternate payee’s share of payments at the percentage specified in the court order;

(3) Bar a vested member from requesting a refund of the member’s accumulated contributions without the alternate payee’s written consent. If a member applies for a refund, a consent form will be sent to the alternate payee at the address of record at IPERS. The completed consent form must be received by IPERS within 60 days. If returned undeliverable or no response is received, the member’s portion of the refund amount will be payable to the member. If returned marked “no consent,” the refund will not be payable to either the member or alternate payee;

(4) Allow benefits to be paid to an alternate payee based on a period of reemployment for a retired member.

16.2(3) Administrative provisions.

a. IPERS uses the shared payment method for payments under a domestic relations order. IPERS will not create a separate account for the alternate payee or any successor alternate payee(s). Payment to the alternate payee (or successor alternate payee(s)) shall be in a lump sum if the member’s benefits are paid in a lump sum distribution or as monthly payments if the member’s benefits are paid under a retirement option. A member shall not be able to receive an actuarial equivalent (AE) under Iowa Code section 97B.48(1) unless the total benefit payable with respect to that member meets the applicable requirements. All divisions of benefits shall be based on the gross amount of monthly or lump sum benefits payable. Federal and state income taxes shall be deducted from the member’s and former spouse alternate payee’s respective shares and reported under their respective federal tax identification numbers. Unrecovered basis shall be allocated on a pro rata basis to the member and alternate payee. Federal and state income taxes shall be deducted from the member’s gross payment when a successor alternate payee(s) receives a payment. Federal and state income taxes shall be reported under the member’s federal tax identification number. Unrecovered basis shall be allocated to the member.

b. The alternate payee shall not be entitled to any share of the member’s death benefits except to the extent such entitlement is so provided in a QDRO or in a beneficiary designation filed subsequent to the dissolution.

c. Upon acceptable proof from a member that a preretirement divorce is final, a member may submit a new enrollment/beneficiary designation form to IPERS. IPERS will place the new designation in the member’s record. However, if a domestic relations order is later received and qualified by IPERS, the provisions of the QDRO shall be deemed, except as revoked or modified in a subsequent QDRO, to operate as a beneficiary designation, and shall be given first priority by IPERS in the determination and payment of such member’s death benefits. Death benefits remaining after payments are made as required by the QDRO, to the extent possible, shall then be made according to the terms of the member’s most recent beneficiary designation. If a QDRO does not contain a form of benefit paragraph requiring the member to select a specific IPERS option at retirement, the member is allowed to select any option at retirement, including an option that does not provide for payment of postretirement death benefits. Once a divorce is final postretirement, a member may submit a new enrollment/beneficiary designation form to IPERS if the member has retired under Option 1, 2 or 5, unless otherwise specified in a QDRO.

d. If an alternate payee has been awarded a share of the member’s benefits and dies before the member, the alternate payee’s entire share shall be restored to the member unless otherwise specified in the order and in the manner required under this rule. In order for the alternate payee’s entire share to be restored to the member, IPERS requires proof of death of the alternate payee in the form of a death certificate. If a death certificate cannot be obtained, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, bureau of health statistics,
IPERS' own internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access.

e. A named successor alternate payee may waive current or future rights to payments to which the successor alternate payee would have otherwise been entitled. The funds waived by a successor alternate payee shall revert to the member. The waiver of rights shall occur prior to the receipt of any payment from IPERS to the successor alternate payee and shall be in the form of a filed and signed court order. The waiver of rights by a successor alternate payee is binding and shall serve to indemnify IPERS from all liability to beneficiaries, heirs, or other claimants for any waiver executed by a successor alternate payee. The waiver must be received by IPERS no later than nine months after the date of death of the alternate payee or the date on which the successor alternate payee reaches age 21, whichever occurs later.

f. An alternate payee shall not receive a share of dividends or other cost-of-living increases, unless so provided in a QDRO.

g. The CEO, or CEO's designee, shall have exclusive authority to determine whether a domestic relations order is a QDRO. A final determination by the CEO, or CEO's designee, may be appealed in the same manner as any other final agency determination under Iowa Code chapter 97B.

h. A person who attempts to make IPERS a party or requires IPERS to appear as a witness to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to a member shall be liable to IPERS for its costs and attorney's fees.

i. A domestic relations order shall not become effective until it is approved by IPERS. If a member is receiving a retirement allowance at the time a domestic relations order is received by the system, the order shall be effective only with respect to payments made after the order is determined to be a QDRO. Payment to the alternate payee will be withheld from the member's payment the month the alternate payee's application is mailed by IPERS. If the member is not receiving a retirement allowance at the time a domestic relations order is approved by IPERS and the member applies for a refund or monthly allowance, or dies, no distributions shall be made until the respective rights of the parties under the domestic relations order are determined by IPERS. If IPERS has placed a hold on the member's account following written or verbal notification from the member, member's spouse, or legal representative of either party of a pending dissolution of marriage, and no further contacts are received from either party or their representatives within the following one-year period, or IPERS has not received and qualified a domestic relations order, IPERS shall release the hold.

j. IPERS and its staff shall have no liability for making or withholding payments in accordance with the provisions of this rule.

k. IPERS has no duty or responsibility to search for alternate payees. Alternate payees must notify IPERS of any change in their mailing addresses. IPERS shall mail the alternate payee an application once an application for a distribution has been received from the member and considered a complete application by IPERS. For monthly benefit applications, the alternate payee is eligible for monthly payments as of the member's first month of entitlement.

l. If a QDRO requires the member to select an option with joint and survivor provisions (Option 4 or 6) and name the alternate payee as contingent annuitant, the order must state the percentage in Option 4 or 6 to be payable to the alternate payee as contingent annuitant (the currently available percentages under Option 4 or 6 are 25, 50, 75 and 100 percent). Acceptable birth proof for the alternate payee as the named contingent annuitant, pursuant to 495—subrule 11.1(2), must also be provided to IPERS prior to approval of the order by IPERS.

m. For both lump sum and monthly payments, the alternate payee’s tax withholding and rollover elections, if eligible, must be received before the first or current month’s benefit is certified for payment or IPERS will use the applicable default tax withholding elections.

n. If an order that is determined to be a QDRO divides a member’s account using a service factor formula and the member’s IPERS benefits are based on a number of quarters less than the member’s total covered quarters, notwithstanding any terms of the order to the contrary, IPERS shall limit the number of quarters used in the numerator and the denominator of the service fraction to the number of quarters actually used in the calculation of IPERS benefits, not to exceed 120 quarters for special service members.
and 140 quarters for regular and hybrid members. IPERS will not accept or administer a service factor formula fraction in excess of 1.

o. Service credit that is purchased during the period when the member is married to the alternate payee shall be added to the numerator and the denominator of the service fraction when calculating the service factor pursuant to a domestic relations order. Service credit that is purchased during a period when the member is not married to the alternate payee shall only be added to the denominator of the service fraction when calculating the service factor pursuant to a domestic relations order. Under no circumstances shall the number of quarters in the denominator be more than the number of quarters used to calculate the member’s benefit. Service purchase after retirement shall not increase or decrease the alternate payee’s payment amount that was deducted and was payable at the time of retirement.

p. The parties or their attorneys in a dissolution action involving an IPERS member shall decide between themselves which attorney will submit a proposed domestic relations order to IPERS for review. With the initial submission of an order for review, drafters must also submit a completed, signed, and dated Confidential Information (CI) form; in addition, every draft order submitted for review must be accompanied by a freshly signed and dated Administrative Rule Compliance for QDROs (ARC) form. Both the member and alternate payee, or their respective counsel, must sign and date the ARC form. Both forms must be wet signed; however, attorneys or pro se filers may sign with their electronic (eFile or EDMS) signatures. A rejection under this paragraph shall not preclude IPERS from placing a hold on a member’s account until the status of a proposed order as a QDRO is resolved or the hold is released pursuant to the terms of paragraph 16.2(3)”i.”

q. If a member has filed for and is receiving monthly pension benefits, or wishes to file an application for retirement or a refund and has a qualified domestic relations order pending on the member’s account, the parties (the member and the alternate payee or their counsel of record) may execute a waiver of the 30-day appeal period following review and qualification of the member’s domestic relations order, using a form approved by the system.

r. If a member with an IPERS-approved QDRO is receiving a distribution according to a qualified benefits arrangement (QBA), the alternate payee shall share in the distribution to the member unless the order specifically states otherwise.

These rules are intended to implement Iowa Code sections 97B.4, 97B.15, 97B.25, 97B.38 and 97B.39.

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655—1.1(17A) **Board mission.** The board of nursing protects the public health, safety, and welfare by regulating the licensure of nurses, the practice of nursing, nursing education, and continuing education. [ARC 6196C, IAB 2/23/22, effective 3/30/22]

655—1.2(17A,147,152,152E,272C) **Description and organization of the board.**

1.2(1) **Board composition.** The board is composed of four registered nurses, two of whom are engaged in active practice and two of whom are nurse educators from nursing education programs; one licensed practical nurse actively engaged in practice; and two members who represent the general public and are not registered nurses or licensed practical nurses. Of those board members who are nurse educators, one should be involved in higher education, and the other should be involved in area community college and vocational-technical nurse education.

1.2(2) **Board leadership and committees.** The board shall annually select a chairperson and a vice chairperson from its own membership. The election of chairperson and vice chairperson, as well as standing committee assignments, shall be done during the first regularly scheduled meeting after May 1.

1.2(3) **Executive director.** The board shall retain a full-time executive director who is responsible for the administration of policies and programs of the board and for the operation of the board office. Pursuant to Iowa Code section 135.11B, the board shall advise the director of the department of public health in evaluating potential candidates for the position of executive director, consult with the director in the hiring of the executive director, and review and advise the director on the performance of the executive director in the discharge of the executive director’s duties.

1.2(4) **Board authority.** The board’s authority for regulating nursing education, nursing practice, and continuing education for nurses in the state of Iowa is found in Iowa Code chapters 147, 147A, 152, 152E, and 272C. [ARC 6196C, IAB 2/23/22, effective 3/30/22]

655—1.3(17A,152,152E,272C) **Responsibilities.** The responsibilities of the board include but are not limited to:

1. Licensing qualified applicants for the practice of nursing by examination, endorsement, renewal, and compact privilege pursuant to Iowa Code chapters 147, 152, 152E, and 272C.
2. Conducting investigations and imposing discipline for violations of statutes or rules related to the practice of nursing pursuant to Iowa Code chapters 147, 152, and 272C.
3. Approving nursing education programs pursuant to Iowa Code section 152.5.
4. Collecting, analyzing, and disseminating nursing workforce data pursuant to Iowa Code section 152.4.
5. Approving continuing education providers to ensure continued competency of individuals licensed by the board to practice nursing pursuant to Iowa Code chapter 272C.
6. Administering the Iowa nurse assistance program to support the evaluation and monitoring of licensees who are impaired as a result of any substance use or mental or physical condition pursuant to Iowa Code section 272C.3.
7. Overseeing the nursing profession through policymaking, rule making, and advocating for and against legislation pursuant to Iowa Code section 135.11B. [ARC 6196C, IAB 2/23/22, effective 3/30/22]

655—1.4(17A,272) **Submission of requests, obtaining information, and board office.** Members of the general public may obtain information or submit requests or complaints relative to the licensure of nursing, practice of nursing, nursing education, continuing education, or any other matters relating to the function and authority of this board. Correspondence should be submitted to the executive director at the board office. The board office is located at: RiverPoint Business Park, 400 S.W. Eighth Street, Suite B, Des Moines, Iowa 50309-4685. [ARC 6196C, IAB 2/23/22, effective 3/30/22]
655—1.5(17A,21) Meetings.

1.5(1) Quorum. A majority of the members of the board constitutes a quorum.

1.5(2) Meeting schedule and public notice. The board shall schedule and hold regular meetings. The date, time, and location of each meeting of the board shall be made available to the public on the board’s website and upon request by contacting the board office.

1.5(3) Special meetings. Special meetings of the board may be called by the chairperson or upon request of four board members to the chairperson or the executive director.

1.5(4) Meeting materials. Materials received at the board office at least three weeks prior to a scheduled board meeting shall be placed on the agenda. Materials from emergency or unusual circumstances may be added to the agenda with the chairperson or executive director’s approval.

1.5(5) Public observation and comment. The board shall provide a means for members of the public to observe and, when appropriate, offer public comment during board meetings unless the board votes to hold a closed session.

a. Anyone who has submitted materials for the agenda or whose presence has been requested by the board shall be given the opportunity to address the board.

b. At every regularly scheduled board meeting, time will be designated for public comment. During the time on the agenda for public comment, anyone may speak for up to two minutes per person. Requests to speak at a later time for two minutes per person when a particular topic comes before the board should be made at the time for public comment and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted to public comment at any one time unless the chairperson indicates otherwise.

c. One who has not asked to address the board during the time for public comment may be recognized by the chairperson upon request. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

[ARC 6196C, IAB 2/23/22, effective 3/30/22]

655—1.6(147,152,272C) Communications. The board may issue or disseminate communications as a means to provide information to licensees and the general public related to the mission and responsibilities of the board. Board communications may include, but are not limited to, publishing updates on its website, issuing a newsletter, and other written, audio, or video methods of communication.

[ARC 6196C, IAB 2/23/22, effective 3/30/22]

These rules are intended to implement Iowa Code chapters 17A, 147, 152, 152E, and 272C.

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CHAPTER 3
LICENSURE TO PRACTICE—REGISTERED NURSE/LICENSED PRACTICAL NURSE

655—3.1(17A,147,152,152E,272C) Definitions.

"Approved nursing program" means a nursing education program whose status has been recognized by the board or by a similar board in another jurisdiction that prepares individuals for licensure as a licensed practical nurse, registered nurse, or advanced registered nurse practitioner; or grants a baccalaureate, master’s or doctorate degree with a major in nursing.

"CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

"Fees" means those fees collected that are based upon the cost of sustaining the board’s mission to protect the public health, safety and welfare. The nonrefundable fees set by the board are as follows:

1. Application for an original license based on the registered nurse examination, $93 (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI)).
2. Application for an original license based on the practical nurse examination, $93 (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the DCI and the FBI).
3. Application for a registered nurse/licensed practical nurse license by endorsement, $119 (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the DCI and the FBI).
4. Application for an original license or renewal as an advanced registered nurse practitioner, $81 for any period of licensure up to three years.
5. For a certified statement that a registered nurse/licensed practical nurse is licensed in this state or registered as an advanced registered nurse practitioner, $25.
6. For reactivation of a license to practice as a registered nurse/licensed practical nurse, $175 for a license lasting more than 24 months up to 36 months (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the DCI and the FBI).
7. For reactivation of a license to practice as an advanced registered nurse practitioner, $81 for any period of licensure up to three years.
8. For the renewal of a license to practice as a registered nurse/licensed practical nurse, $99 for a three-year period.
9. For the late renewal of a registered nurse/licensed practical nurse license, $50 (plus the renewal fee as specified in paragraph “8” of this definition).
10. For a check returned for any reason, $15. If licensure/registration has been issued by the board office based on a check for the payment of fees and the check is later returned by the bank, the board shall request payment by certified check or money order.
11. For a certified copy of an original document, $20.
12. For the processing of the fingerprint cards and the DCI and FBI criminal history background checks, $50.
13. For a petition for eligibility determination, $25.

"IELTSTM" means the International English Language Testing System.

"Inactive license" means a registered nurse or licensed practical nurse license that has been placed on inactive status because it was not renewed by the fifteenth day of the month following the expiration date or means that the board has received notification that a licensee has declared another compact state as the primary state of residency.

"Late license" means a registered nurse or licensed practical nurse license that has not been renewed by the expiration date. The time between the expiration date and the fifteenth day of the month following the expiration date is considered a grace period.

"Licensee" means a person who has been issued a license to practice as a registered nurse, licensed practical nurse or advanced registered nurse practitioner under the laws of this state.
“Multistate license” means a license to practice as a registered nurse or licensed practical nurse issued to a qualified person under Iowa Code chapter 152E that authorizes the holder to practice in all party states under a multistate licensure privilege.

“Multistate licensure privilege” means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse or a licensed practical nurse in a party state.

“NCSBN” means the National Council of State Boards of Nursing, Inc.

“Nurse licensure compact” means the agreement between party states, as set forth in Iowa Code chapter 152E, to allow mutual recognition of a nursing license.

“Overpayment” means payment in excess of the required fee. An overpayment less than $10 received by the board shall not be refunded.

“Party state” means any state that has adopted the nurse licensure compact.

“TOEFL®” means the Test of English as a Foreign Language.

[ARC 6197C, IAB 2/23/22, effective 3/30/22]

655—3.2(17A,147,152,272C) Mandatory licensure.

3.2(1) A person who engages in the practice of nursing in the state of Iowa as defined in Iowa Code section 152.1, outside of caring for one’s family, shall have a current Iowa license, whether or not the person’s employer is in Iowa and whether or not the person receives compensation. Any nurse who participates in the care of a patient situated in Iowa, whether that care is provided through telephonic, electronic or in-person means, and regardless of the location of the nurse, must obtain Iowa licensure unless specifically exempted.

3.2(2) Current Iowa licensure is not mandatory when:
   a. A nurse holds an active multistate license issued by a party state, pursuant to Iowa Code chapter 152E. A nurse who practices nursing in Iowa pursuant to a multistate licensure privilege is subject to the jurisdiction of the board, the courts, and the laws of Iowa.
   b. A nurse holds an active license in another state and is providing services to patients in Iowa only during interstate transit.
   c. A nurse holds an active license in another state and is providing emergency services in an area in which the governor of Iowa has declared a state of emergency.

3.2(3) A licensed practical nurse who is enrolled in an approved program for registered nurses shall hold an active licensed practical nurse license in all jurisdictions in which the licensed practical nurse provides patient care. A registered nurse who is enrolled in an approved program for advanced registered nurse practitioners shall hold an active registered nurse license in all jurisdictions in which the registered nurse provides patient care.

[ARC 6197C, IAB 2/23/22, effective 3/30/22]

655—3.3(17A,147,152,272C) Licensure qualifications for registered nurse and licensed practical nurse. Applicants for registered nurse and licensed practical nurse licenses shall meet the following requirements:

3.3(1) Graduation from an approved nursing program.

3.3(2) Successful passage of the National Council Licensure Examination (NCLEX®) or the State Board Test Pool Examination, the national examination used prior to 1982. The passing standard shall be the standard established by the testing authority at the time the test was administered.

3.3(3) If applicable, board approval of an applicant with a criminal history, pursuant to rule 655—3.11(272C), or a record of prior disciplinary action, regardless of jurisdiction.

[ARC 6197C, IAB 2/23/22, effective 3/30/22]

655—3.4(17A,147,152,272C) Licensure by examination.

3.4(1) Board application. A graduate of an approved nursing program seeking initial licensure as a registered nurse or licensed practical nurse shall submit the following:
   a. A completed application for licensure by examination.
   b. Payment of the application fee.
c. Two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check.

d. If the applicant has a criminal history, copies of all documents required by rule 655—3.11(272C).

e. An official transcript denoting the date of graduation and diploma or degree conferred, sent directly to the board from the nursing program.

3.4(2) **Test registration.** The applicant shall complete NCLEX® registration, including payment of applicable fees through the national test service agency.

3.4(3) **Americans with Disabilities Act accommodations.** An applicant with a disability may submit a request to the board for testing accommodations. The request must include the nature of the disability and the specific testing accommodations being requested. A request must be accompanied by written documentation from the applicant’s health care provider describing the disability and the recommended accommodations, and documentation from the applicant’s nursing education program if testing accommodations were provided to the applicant during school. The board’s recommendation regarding approval of accommodation requests will be communicated to the national test service agency.

3.4(4) **Authorization to test.** An applicant will not receive an authorization to test until all of the requirements in subrules 3.4(1) and 3.4(2) are met. An applicant shall self-schedule the examination with an approved testing center and must test within 91 days of receiving the authorization to test. An applicant who does not test within 91 days of receiving the authorization to test is required to submit a new completed application for licensure by examination and fee to the board. An applicant who does not appear for a testing appointment or does not complete the examination must follow the requirements for reexamination.

3.4(5) **Reexamination.** An applicant who fails the examination and reapplies within 12 months of submitting a prior application to the board shall be required to complete the requirements in paragraphs 3.4(1) “a” and “b” and subrule 3.4(2). An applicant who fails the examination and reapplies after 12 months of submitting a prior application to the board shall be required to complete all requirements in subrules 3.4(1) and 3.4(2).

3.4(6) **Licensure.** Upon satisfactory review of the documentation required by subrule 3.4(1) and proof of successful passage of the examination, the applicant will be issued a license to practice as a registered nurse or licensed practical nurse.

3.4(7) **Failure to complete the licensure process.** Once an application is initiated, the applicant has 12 months to complete the licensure process. The board reserves the right to destroy any applications and supporting documents after 12 months if the applicant has not completed the licensure process. Applicants who fail to complete the licensure process within 12 months are required to start the application process anew.

[ARC 6197C; IAB 2/23/22, effective 3/30/22]

655—3.5(17A,147,152,272C) Licensure by endorsement.

3.5(1) **Board application.** A graduate of an approved nursing program seeking licensure as a registered nurse or licensed practical nurse in Iowa who has been licensed in another state shall submit the following:

a. A completed application for licensure by endorsement.

b. Payment of the application fee.

c. Two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check.

d. If the applicant has a criminal history, copies of all documents required by rule 655—3.11(272C).

e. Copies of relevant disciplinary documents if the applicant has had disciplinary action taken by another state.

f. Verification of the license from the original state of licensure, which may be done through www.nursys.com or by using the verification form depending on the requirements of the original state of licensure.
g. Proof of active licensure in any jurisdiction within the previous five years from the date of application or proof of completion of a nurse refresher course in accordance with rule 655—3.10(152) within the 12 months prior to the date of application.

h. An official transcript denoting the date of graduation and diploma or degree conferred, sent directly to the board from the nursing program. An applicant may be excused from this requirement if the nursing program is closed and records are no longer available.

3.5(2) Temporary license. An applicant who has submitted all documentation described in paragraphs 3.5(1) “a” through “g” may request a temporary registered nurse or licensed practical nurse license, which authorizes the practice of nursing in Iowa for a maximum of 30 days, pending receipt of official transcripts from the nursing program. A temporarily licensed licensee will automatically be issued a permanent license upon receipt of satisfactory transcripts from the nursing program.

3.5(3) Licensure. Upon satisfactory review of the documentation described in subrule 3.5(1), the applicant will be issued a license to practice as a registered nurse or licensed practical nurse.

3.5(4) Failure to complete the licensure process. Once an application is initiated, the applicant has 12 months to complete the licensure process. The board reserves the right to destroy any applications and supporting documents after 12 months if the applicant has not completed the licensure process. Applicants who fail to complete the licensure process within 12 months are required to start the application process anew.

3.5(5) Changing primary state of residence for multistate license. A nurse who holds a multistate license issued by a party state and who changes the nurse’s primary state of residence to Iowa must apply for licensure in Iowa pursuant to this rule. Upon issuance of a multistate license by the board, the nurse’s prior multistate license will be deactivated.

[ARC 6197C, IAB 2/23/22, effective 3/30/22]

655—3.6(17A,147,152,272C) Applicants educated in a foreign country or in a U.S. territory that is not a member of NCSBN.

3.6(1) Applicant for licensure. An applicant seeking licensure in Iowa who was educated in a foreign country or in a U.S. territory that is not a member of NCSBN shall apply for licensure by examination pursuant to rule 655—3.4(17A,147,152,272C) or licensure by endorsement pursuant to rule 655—3.5(17A,147,152,272C), as applicable, but instead of submitting an official transcript, shall submit one of the following documents issued by CGFNS:


b. VisaScreen® certificate or certificate verification letter verifying that a VisaScreen® certificate was issued.

c. CGFNS Certification Program® certificate or certificate verification letter verifying that a CGFNS Certification Program® certificate was issued.

3.6(2) CGFNS documentation. The documentation issued by CGFNS shall verify all of the following:

a. Completion of education equivalent to approved nursing programs for licensed practical nurse and registered nurse applicants.

b. The applicant’s licensure or registration as a nurse in the applicant’s country or U.S. territory of origin, current country or U.S. territory of residence, or country or U.S. territory where educated.

c. The ability to read, write, speak, and understand the English language as determined by passing the TOEFL® or IELTSTM test. For the TOEFL® test, a passing score is as follows: 560 for the TOEFL® paper-based test, or 220 for the TOEFL® computer-based test, or 84 for the TOEFL® Internet-based test with a speaking score of at least 26. For the IELTSTM test, a passing score is as follows: an overall score of 6.5 and a speaking score of 7.0. An applicant shall be exempt from taking either the TOEFL® or IELTSTM test when all of the following requirements are met:

1. The nursing education was completed in a college, university, or professional school located in Australia, Barbados, Canada (except Quebec), Ireland, Jamaica, New Zealand, South Africa, Trinidad and Tobago, or the United Kingdom.

2. The language of instruction in the nursing program was English.
(3) The language of the textbooks in the nursing program was English.

3.6(3) Social security number. To be eligible for a multistate license, an applicant must have a social security number. An applicant who does not have a social security number shall submit documentation of lawful presence and will only be eligible for a single state license.

[ARC 6197C, IAB 2/23/22, effective 3/30/22]

655—3.7(17A,147,152,272C) License renewal and reactivation.

3.7(1) Name and address changes. Licensees must notify the board in writing of any name or address change within 30 days of the change. Licensure documents are mailed to the licensee at the address on file in the board office. There is no fee for a change of name or address in board records.

3.7(2) Initial licenses. The board shall issue licenses by endorsement and examination for a 24- to 36-month period. When the license is renewed, it will be placed on a three-year renewal cycle. License expiration shall be on the fifteenth day of the licensee’s birth month.

3.7(3) Renewal. The licensee may renew the license beginning 60 days prior to license expiration.

a. The licensee shall:
   1. Attest that Iowa is the primary state of residence or that the primary state of residence is a noncompact state. The board may request evidence of residency.
   2. Submit the renewal application and the renewal fee.
   3. Meet the continuing education requirement as set forth in 655—Chapter 5, prior to license renewal.

b. Complete the required mandatory reporter training set forth in paragraph 3.7(3)”b.”

   (1) Mandatory reporter training.

   (2) The course(s) shall be the curriculum provided by the Iowa department of human services.

   (3) A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of training in child abuse identification and reporting as required by Iowa Code section 232.69(3)”b” in the previous three years or condition(s) for rule suspension as identified in subparagraph 3.7(3)”b”(5).

   (4) A licensee who regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)”b” in the previous three years or condition(s) for rule suspension as identified in subparagraph 3.7(3)”b”(5).

   (5) The licensee shall maintain written documentation for three years after mandatory training as identified in subparagraphs 3.7(3)”b”(2) and (3), including program date(s), content, duration, and proof of participation.

   (6) The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:
      1. Is engaged in active duty in the military service of this state or the United States.
      2. Holds a current exemption based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 655—Chapter 5.

   (7) The board may select licensees for audit of compliance with the requirements in subparagraphs 3.7(3)”b”(1) through (5).

3.7(4) Late renewal. The license becomes late when the license has not been renewed by the expiration date. The licensee shall be assessed a late fee as specified in rule 655—3.1(17A,147,152,152E,272C). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee before the fifteenth day of the month following the expiration date.

3.7(5) Inactive status. The license shall become inactive when the license has not been renewed by the fifteenth day of the month following the expiration date.

   a. If the inactive license is not reactivated, it shall remain inactive.
b. If the licensee resides in Iowa or a noncompact state, the licensee shall not practice nursing in Iowa until the license is reactivated to active status. If the licensee is identified as engaging in the practice of nursing with an inactive license, disciplinary proceedings may be initiated.

c. The licensee is not required to obtain continuing education credit or pay fees while the license is inactive.

3.7(6) Changing primary state of residence for multistate license. A licensee who holds a multistate license issued by this board and who changes the licensee’s primary state of residency to another party state must apply for licensure in the new party state. Once the board has been notified by the new party state that a new license has been issued, the Iowa multistate license will become inactive.

3.7(7) Reactivation.

a. To reactivate an inactive license, the licensee shall comply with the following:
   1. A completed reactivation application.
   2. Payment of the applicable fees.
   4. Two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check.

b. Upon receipt of all necessary materials, the licensee shall be issued a license for a 24- to 36-month period. At the time of the next renewal, the license will be placed on a three-year renewal cycle. License expiration shall be on the fifteenth day of the licensee’s birth month.

c. An applicant who fails to complete the reactivation of licensure process within 12 months from the date of initial application must reapply. All fees are nonrefundable.

[ARC 6197C, IAB 2/23/22, effective 3/30/22]

655—3.8(17A,147,152,272C) Verification. Upon written request from the licensee or another jurisdiction and payment of the verification fee as specified in rule 655—3.1(17A,147,152,152E,272C), the board shall provide a certified statement to another jurisdiction or entity that the license of a registered nurse, licensed practical nurse or advanced registered nurse practitioner is active, inactive or encumbered/disciplined in Iowa.

[ARC 6197C, IAB 2/23/22, effective 3/30/22]

655—3.9(17A,272C) License denial.

3.9(1) Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that cites the factual and legal basis for denying the application, notifies the applicant of the appeal process and specifies the date upon which the denial will become final if not appealed.

3.9(2) An applicant who has been issued a preliminary notice of denial may appeal the notice and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director within 30 days following the date the preliminary notice of denial was mailed. The request for hearing shall specify the factual or legal errors in the preliminary notice of denial and provide any additional written information or documents in support of the licensure.

3.9(3) All hearings held pursuant to this rule shall be held in accordance with the process outlined in 655—Chapter 20.

3.9(4) If an applicant does not appeal a preliminary notice of denial, the preliminary notice of denial automatically becomes final.

[ARC 6197C, IAB 2/23/22, effective 3/30/22]

655—3.10(152) Nurse refresher course.

3.10(1) A nurse refresher course shall meet the following requirements:
a. A minimum of 80 hours of theory, with content in basic nursing skills, pharmacology, physical assessment, intravenous (IV) therapy (registered nurse only), and legal and ethical considerations in health care; and

b. A minimum of 80 hours of hands-on supervised clinical learning experiences.

3.10(2) To participate in the clinical component of a nurse refresher course in Iowa, a licensee must have an active license to practice nursing in Iowa or a limited authorization issued by the board. A licensee shall request the limited authorization from the board prior to beginning the clinical component of a nurse refresher course.

3.10(3) To receive a certificate of completion from the nurse refresher course, a licensee must complete all requirements of the nurse refresher course to the satisfaction of the course provider. The course provider shall submit proof of the licensee’s completion of the nurse refresher course directly to the board.

[ARC 6197C; IAB 2/23/22, effective 3/30/22]

655—3.11(272C) Use of criminal convictions in eligibility determinations and initial licensing decisions.

3.11(1) Definitions.

“Complete criminal record” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor and regardless of the jurisdiction in which the offense occurred.

“Conviction” means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“Disqualifying offense” means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

“License” means a license issued by the board.

3.11(2) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to subrule 3.11(3), the applicant’s convictions will be reviewed when the board receives a completed license application.

a. An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

b. In order for the license application to be considered complete, an applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession.

c. An applicant must submit as part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

d. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

e. An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

f. Any application fees paid will not be refunded if the license is denied.

3.11(3) Eligibility determination.

a. An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual’s convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

b. To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner shall submit all of the following:
(1) A completed eligibility determination form;
(2) The complete criminal record for each of the petitioner’s convictions;
(3) A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should deem the petitioner rehabilitated;
(4) All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
(5) Payment of a nonrefundable fee of $25.

3.11(4) Appeal. A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board’s written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board’s rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board’s written decision will become a final order.

a. An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

b. The contested case hearing shall be closed to the public, and the board’s review of a proposed decision shall occur in closed session.

c. The office of the attorney general shall represent the board’s initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner’s or applicant’s convictions include at least one disqualifying offense. Upon the satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

d. A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

3.11(5) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

These rules are intended to implement Iowa Code chapters 17A, 147, 152, 152E, and 272C.

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◊ Two or more ARCs
1 History relating also to “Licensure to Practice—Licensed Practical Nurse,” Ch 4 prior to IAC 5/23/84.
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CHAPTER 4
DISCIPLINE

655—4.1(17A,147,152,272C) Board authority. The board may discipline a licensee pursuant to Iowa Code chapters 147, 152, 272C, and 272D and rules promulgated thereunder.

655—4.2(17A,147,152,272C) Complaints and investigations.

4.2(1) General. Upon receipt of a written complaint or upon its own motion pursuant to other information received by the board, the board may review and investigate alleged acts or omissions that may violate the board’s rules or that are related to the ethical or professional conduct of a licensee. The board may also determine that a complaint does not warrant an investigation.

4.2(2) Confidentiality of investigative files. Complaint files, investigation files, and all other investigation reports and investigation information in the possession of the board, including any employees or agents of the board, that relate to licensee discipline are confidential pursuant to Iowa Code section 272C.6(4).

4.2(3) Investigation. In order to determine whether disciplinary action is warranted, the executive director or a board investigator may conduct an investigation into the allegations of a complaint. Upon completion of an investigation, the investigator shall prepare a report for the board’s consideration. The report may contain evidence gathered by the investigator, findings made by the investigator, the licensee’s response to the allegations, and the potential laws or rules alleged to have been violated.

655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas. The board has the authority to issue investigatory subpoenas pursuant to Iowa Code section 17A.13.

4.3(1) Scope of subpoena. The executive director or designee may, upon the written request of a board investigator or on the executive director’s own initiative, subpoena books, papers, records, and any other real evidence necessary for the board to determine whether it should institute a contested case proceeding.

4.3(2) Content of request. A written request for a subpoena or the executive director’s written memorandum in support of the issuance of a subpoena shall contain the following:

a. The name and address of the person to whom the subpoena will be directed;

b. A specific description of the books, papers, records or other real evidence requested;

c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.3(3) Additional requirements for subpoenas for mental health records. In the case of a subpoena for mental health records, a written request for a subpoena or the executive director’s written memorandum in support of the issuance of the subpoena shall, in addition to the requirements of subrule 4.3(2), set forth sufficient facts to establish the following:

a. The nature of the complaint reasonably justifies the issuance of a subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

4.3(4) Contents of subpoena. Each issued subpoena shall contain the following:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records, or other real evidence requested;

c. The date, time, and location for production or inspection and copying;
d. The time within which a motion to quash or modify the subpoena must be filed;

e. The signature, address, and telephone number of the executive director or designee;

f. The date of issuance; and

4.3(5) Motion to quash. Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.3(6) Ruling on motion. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.3(7) Appeal of an administrative law judge ruling. A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.3(8) Judicial review. If the person contesting the subpoena is not the person under investigation, the board’s decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board’s decision is not final for purposes of judicial review until either:

a. The person is notified that the investigation has been concluded with no formal action; or

b. There is a final decision in the contested case.

[ARC 6198C, IAB 2/23/22, effective 3/30/22]

655—4.4(17A,147,152,272C) Board action. When reviewing complaints and investigative material, the board shall do one of the following:

4.4(1) Close the case without further action.

4.4(2) Close the case and issue the licensee a confidential letter of warning or letter of education. The purpose of confidential letters of warning and letters of education is to alert the licensee to possible violations of Iowa law or board rules so the licensee may address any issues. Confidential letters of warning and letters of education do not constitute formal disciplinary action and are not open for inspection under Iowa Code chapter 22. The board shall maintain a copy of confidential letters of warning and letters of education in the confidential investigative file regarding the licensee. Confidential letters of warning and letters of education may be used as evidence against a licensee in future contested case hearings before the board.

4.4(3) Request further investigation, including obtaining a peer review.

4.4(4) Determine the existence of probable cause and issue a notice of hearing and statement of charges or approve a combined statement of charges and settlement agreement.

[ARC 6198C, IAB 2/23/22, effective 3/30/22]

655—4.5(17A,147,152,272C) Peer review committee. Any case may be referred to peer review for evaluation of the professional services rendered by the licensee.

4.5(1) Contract and case referral. The board shall enter into a contract with peer reviewers to provide peer review services. The board or board staff shall determine which peer reviewer(s) will review a case and what investigative information shall be referred to a peer reviewer.

4.5(2) Written report. Peer reviewers shall review the information provided and provide a written report to the board. The written report shall contain an opinion of the peer reviewer regarding whether the licensee conformed to minimum standards of acceptable and prevailing practice of nursing and the rationale supporting the opinion.

4.5(3) Confidentiality. Peer reviewers shall observe the confidentiality requirements imposed by Iowa Code section 272C.6(4).

[ARC 6198C, IAB 2/23/22, effective 3/30/22]
Grounds for discipline. A licensee may be disciplined for failure to comply with the rules promulgated by the board and for any wrongful act or omission related to nursing practice, licensure, or professional conduct.

4.6(1) In accordance with Iowa Code section 147.55(1), behavior which constitutes fraud in procuring a license may include, but need not be limited to, the following:
   a. Falsification of the application, credentials, or records submitted to the board for licensure or license renewal as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner.
   b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner.
   c. Impersonating any applicant in any examination for licensure as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner.

4.6(2) In accordance with Iowa Code section 147.55(2), professional incompetency may include, but need not be limited to, the following:
   a. Lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.
   b. Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other nurses in the state of Iowa acting in the same or similar circumstances.
   c. Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.
   d. Willful or repeated failure to practice nursing with reasonable skill and safety.
   e. Willful or repeated failure to practice within the scope of current licensure or level of preparation.
   f. Failure to meet the standards as defined in 655—Chapter 6.
   g. Failure to meet the standards as defined in 655—Chapter 7.
   h. Failure to comply with the requirements of Iowa Code chapter 139A.

4.6(3) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession may include, but need not be limited to, the following:
   a. Oral or written misrepresentation relating to degrees, credentials, licensure status, records, and applications.
   b. Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

4.6(4) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following:
   a. Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.
   b. Allowing another person to use one’s nursing license for any purpose.
   c. Failing to comply with any rule promulgated by the board related to minimum standards of nursing.
   d. Improper delegation of nursing services, functions, or responsibilities.
   e. Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.
   f. Committing an act which causes physical, emotional, or financial injury to the patient or client.
   g. Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.
   h. Violating the confidentiality or privacy rights of the patient or client.
   i. Discriminating against a patient or client because of age, sex, race, ethnicity, national origin, creed, illness, disability, sexual orientation, or economic or social status.
   j. Failing to assess, accurately document, evaluate, or report the status of a patient or client.
   k. Misappropriating or attempting to misappropriate medications, property, supplies, or equipment of the patient, client, or agency.
l. Fraudently or inappropriately using or permitting the use of prescriptions, obtaining or attempting to obtain prescription medications under false pretenses, or assisting others to obtain or attempt to obtain prescription medication under false pretenses.

m. Practicing nursing while under the influence of alcohol, marijuana, or illicit drugs or while impaired by the use of pharmacological agents or medications, even if legitimately prescribed.

n. Being involved in the unauthorized manufacture or distribution of a controlled substance.

o. Being involved in the unauthorized possession or use of a controlled substance.

p. Engaging in behavior that is contradictory to professional decorum.

q. Failing to report suspected wrongful acts or omissions committed by a licensee of the board.

r. Failing to comply with an order of the board.

s. For an advanced registered nurse practitioner, prescribing, dispensing, administering, or distributing drugs:
   (1) In an unsafe manner.
   (2) Without accurately documenting it or without assessing, evaluating, or instructing the patient or client.
   (3) To individuals who are not patients or who are outside of the licensee’s specialty area.

 t. Engaging in repeated verbal or physical conduct that interferes with another health care worker’s performance or creates an intimidating, hostile, or offensive work environment.

u. Failing to properly safeguard or secure medications.

v. Failing to properly document or perform medication wastage.

4.6(5) For purposes of this subrule, “patient” is defined to include the patient and the patient’s family or caretakers who are present with the patient while the patient is under the care of the licensee. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct or practice harmful or detrimental to the public may include, but need not be limited to, the following professional boundaries violations:
   a. Sexual contact with a patient, regardless of patient consent.
   b. Making lewd, suggestive, demeaning, or otherwise sexual comments, regardless of patient consent.
   c. Participating in, initiating, or attempting to initiate a sexual, emotional, social, or business relationship with a patient, regardless of patient consent.
   d. Soliciting, borrowing, or misappropriating money or property from a patient, regardless of patient consent.
   e. Repeatedly divulging personal information to a patient for nontherapeutic purposes, regardless of patient consent.
   f. Engaging in a sexual, emotional, social, or business relationship with a former patient when there is a risk of exploitation or harm to the patient, regardless of patient consent.

4.6(6) In accordance with Iowa Code section 147.55(4), habitual intoxication or addiction to the use of drugs may include, but need not be limited to, the following:
   a. Excessive use of alcohol which may impair a licensee’s ability to practice the profession with reasonable skill and safety.
   b. Excessive use of drugs which may impair a licensee’s ability to practice the profession with reasonable skill and safety.

4.6(7) Being convicted of an offense that directly relates to the duties and responsibilities of the profession. A conviction includes a guilty plea, including Alford and no contest plea, or a finding or verdict of guilt, even if the adjudication of guilt is deferred, withheld, or not entered. A copy of the guilty plea or order of conviction constitutes conclusive evidence of conviction. An offense directly relates to the duties and responsibilities of the profession if the actions taken in furtherance of the offense are actions customarily performed within the scope of practice of the profession or the circumstances under which the offense was committed are circumstances customary to the profession.

4.6(8) In accordance with Iowa Code section 147.55(5), fraud in representation as to skill or ability.

4.6(9) In accordance with Iowa Code section 147.55(6), use of untruthful or improbable statements in advertisements.
4.6(10) In accordance with Iowa Code section 147.55(7), willful or repeated violations of provisions of Iowa Code chapter 147, 152, or 272C.

4.6(11) In accordance with Iowa Code section 147.55(8), other acts or offenses as specified by board rule, including the following:
   a. Failing to provide written notification of a change of address to the board within 30 days of the event.
   b. Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory, or country.
   c. Failing to notify the board of a criminal conviction within 30 days of the action, regardless of whether the judgment of conviction or sentence was deferred, and regardless of the jurisdiction where it occurred.
   d. Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.
   e. Failing to respond to the board during a board audit or submit verification of compliance with continuing education requirements or exceptions within the time period provided.
   f. Failing to respond to the board during a board audit or submit verification of compliance with training in child or dependent adult abuse identification and reporting or exceptions within the time period provided.
   g. Failing to respond to the board during a board audit or submit verification of compliance with the requirements for the supervision of fluoroscopy set forth in 655—subrule 7.4(5) or exceptions within the time period provided.
   h. Failing to respond to or comply with a board investigation or subpoena.
   i. Engaging in behavior that is threatening or harassing to the board, board staff, or agents of the board.
   j. Violating an initial agreement or contract with the Iowa nurse assistance program committee.

4.6(12) In accordance with Iowa Code section 147.2 or 147.10:
   a. Engaging in the practice of nursing in Iowa prior to licensure or not pursuant to the nurse licensure compact.
   b. Engaging in the practice of nursing in Iowa on an inactive license.

4.6(13) In accordance with Iowa Code section 152.10(2):
   a. Continuing to practice while knowingly having an infectious or contagious disease which could be harmful to a patient’s welfare without taking precautions to meet the current standard of care.
   b. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse, or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority of another state, territory, or country.
   c. Having a license to practice nursing as a registered nurse, licensed practical/vocational nurse, or advanced registered nurse practitioner revoked or suspended, or having other disciplinary action taken, by a licensing authority in another state which has adopted the nurse licensure compact contained in Iowa Code section 152E.1 or the advanced practice registered nurse compact contained in Iowa Code section 152E.3 and which has communicated information relating to such action pursuant to the coordinated licensure information system established by the compact. If the action taken by the licensing authority occurs in a jurisdiction which does not afford the procedural protections of Iowa Code chapter 17A, the licensee may object to the communicated information and shall be afforded the procedural protections of Iowa Code chapter 17A.
   d. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice nursing.
   e. Being adjudicated mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.
f. Being unable to practice nursing with reasonable skill and safety by reason of illness or as a result of a mental or physical condition.

[ARC 6198C, IAB 2/23/22, effective 3/30/22]

655—4.7(17A,147,152,272C) Sanctions.

4.7(1) A sanction is a disciplinary action by the board which resolves a contested case.

4.7(2) The board may impose one or more of the following sanctions:

a. Revocation of a license.

b. Suspension of a license until further order of the board or for a specified period.

c. Nonrenewal of a license.

d. Restriction on engaging in specified nursing procedures, methods, settings, or acts.

e. Probation.

f. Additional education or training, reexamination, or both.

g. Physical, mental, or substance abuse evaluation, alcohol or drug screening, or clinical competency evaluation.

h. Civil penalty. Assessment of a fine shall be specified in the order and may not exceed a maximum amount of $1,000.

i. Citation and warning.

j. Such other sanctions allowed by law as may be appropriate.

[ARC 6198C, IAB 2/23/22, effective 3/30/22]

655—4.8(17A,147,152,272C) Voluntary surrender. A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board. A voluntary surrender, when accepted by the board, has the same force and effect as an order of revocation. A voluntary surrender of a license during the pendency of a complaint or investigation shall be considered discipline and shall have the same force and effect as an order of revocation.

[ARC 6198C, IAB 2/23/22, effective 3/30/22]

655—4.9(17A,147,152,272C) Prohibited grounds for discipline. The board shall not suspend or revoke the license of a person who is in default or is delinquent on repayment of a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

[ARC 6198C, IAB 2/23/22, effective 3/30/22]

These rules are intended to implement Iowa Code chapters 17A, 147, 152, and 272C.

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811—10.1(17A,169,272C) Board authority. The board may discipline any credential holder for any grounds stated in Iowa Code chapters 169 and 272C or rules promulgated thereunder.

811—10.2(17A,169,272C) Complaints and investigations. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a credential holder.

10.2(1) In accordance with Iowa Code section 272C.3(1)“c,” the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for credential holder discipline.

10.2(2) The executive secretary or authorized designee shall investigate complaints in order to determine the probability that a violation of law or rule has occurred.

811—10.3(17A,169,272C) Investigatory subpoena powers. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

10.3(1) A subpoena which requires production of real evidence that is necessary to an investigation may be issued upon the authority of the executive secretary or a designee.

10.3(2) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after the service of the subpoena or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

10.3(3) In the event obedience to a subpoena is refused, the requesting party may petition the district court for enforcement.

811—10.4(17A,169,272C) Board action. The board shall review investigative conclusions and take one of the following actions:

1. Close the investigative case without action.
2. Request further inquiry.
3. Appoint a peer review committee to assist with the investigation.
4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6.

811—10.5(17A,169,272C) Peer review committee. The board may establish a peer review committee to assist with the investigative process when deemed necessary.

10.5(1) The committee shall determine if the conduct of the credential holder conforms to minimum standards of acceptable and prevailing practice of veterinary medicine or other applicable standards and submit a report of its findings to the board.

10.5(2) The board shall review the committee’s findings and proceed with action available under rule 811—10.4(17A,169,272C).

10.5(3) The peer review committee shall observe the confidentiality requirements imposed by Iowa Code section 272C.6.

811—10.6(17A,169,272C) Grounds for discipline and principles of veterinary medical ethics. The board has established grounds for discipline and principles of ethics for veterinary medicine. Without regard as to whether the board has determined that an injury has occurred, the board may impose any of the disciplinary sanctions set forth in rule 811—10.7(17A,169,272C), including civil penalties in an amount not to exceed $10,000, when the board determines that the credential holder is guilty of any of the following acts or offenses:

10.6(1) Grounds applicable to all credential holders.
a. Fraud in procuring a credential, which includes but is not limited to an intentional perversion of the truth in making application for a credential to practice any of the professions or activities regulated by the board in this state, and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a credential in this state, or attempting to file or filing with the board or the Iowa department of agriculture and land stewardship any false or forged diploma, certificate, affidavit, identification, or qualification in making an application for a credential in this state.

b. Credential holder professional incompetency. Professional incompetency of a credential holder may be established by:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the credential holder’s practice.

(2) A substantial deviation by the credential holder from the standards of learning or skill ordinarily possessed and applied by other credential holders acting in the same or similar circumstances.

(3) A willful or repeated departure from or the failure to conform to the minimal standards of acceptable and prevailing practice of credential holders.

(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public.

1. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, and includes any representation contrary to legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare or may operate to the injury of another.

2. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a credential holder to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent credential holder acting in the same or similar circumstances, including for a veterinarian a violation of the standards of practice as set out in 811—Chapter 12, or when a credential holder is unable to practice with reasonable skill and safety on a client’s animals as a result of a mental or physical impairment or chemical abuse.

(5) Habitual intoxication or addiction to the use of drugs, which includes, but is not limited to, the inability of a credential holder to practice with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other types of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other types of material which may impair a credential holder’s ability to practice with reasonable skill and safety. The board may require a credential holder’s completion of a treatment program as a condition of probation or suspension, and shall consider the credential holder’s willingness to complete a treatment program when determining the appropriate degree of disciplinary sanction.

(6) Conviction of a felony which is either of the following:

1. One that is related to the credential holder’s profession or occupation; or

2. One that would affect the credential holder’s ability to practice within the profession.

Conviction of a felony related to the profession or occupation of the credential holder or the conviction of any felony that would affect the credential holder’s ability to practice within the profession includes, but is not limited to, the conviction of a public offense in the practice of the credential holder’s profession which is defined or classified as a felony under state or federal law, or violation of a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the credential holder’s profession or conviction of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon a credential holder in this state. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

(7) Fraud in representations as to skill or ability, which includes but is not limited to a credential holder’s having made misleading, deceptive or untrue representations as to the credential holder’s competency to perform professional services for which the credential holder is not qualified to perform by training or experience.
(8) Use of untruthful or improbable statements in advertisements, which includes but is not limited to an action by a credential holder in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but not be limited to:
   1. Inflated or unjustified expectations of favorable results;
   2. Self-laudatory claims that imply that the credential holder engaged in a field or specialty of practice for which the credential holder is not qualified. A veterinarian is not qualified to claim or imply specialization unless the veterinarian is a member in good standing of the respective specialty board or college recognized by the AVMA;
   3. Representations that are likely to cause the average person to misunderstand; or
   4. Extravagant claims or claims of extraordinary skills not recognized by the credential holder’s profession.

(9) Willful or repeated violations of the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board.

(10) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of veterinary medicine.

(11) Failure to report a license, certificate, permit, or other credential revocation, suspension or other disciplinary action taken by a licensing or regulating authority of another state, territory or country within 30 days of the final action by such licensing or regulating authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

(12) Failure of a credential holder or an applicant for a credential in this state to report, within 30 days, any of the following:
   1. Any settlement agreement or voluntary agreement to restrict the practice of veterinary medicine or other applicable activities entered into in another state, district, territory or country; or
   2. Any adverse judgment in a malpractice action to which the credential holder is a party; or
   3. Any settlement of a claim against the credential holder alleging malpractice.

(13) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice veterinary medicine.

(14) Inability to perform duties for which a credential is required with reasonable skill and safety by reason of a mental or physical impairment.

(15) Violating a lawful order of the board previously entered by the board in a disciplinary hearing.

(16) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a credential for the duration of the credential unless the board orders otherwise.

(17) Knowingly submitting a false report of continuing education or failure to submit the triennial report of continuing education.

(18) Failure to comply with a subpoena issued by the board.

(19) Willful or gross negligence.

(20) Obtaining any fee by fraud or misrepresentation.

(21) Violating any of the grounds for the revocation or suspension of a credential as listed in Iowa Code section 169.13 or these rules.

(22) Having the person’s certificate, license, permit, or other credential revoked or suspended, or having any other disciplinary action taken by a licensing or regulating authority of another state, territory, country, or the United States Department of Agriculture (USDA), or having the veterinarian’s USDA accreditation revoked, suspended or other disciplinary action taken against the accreditation. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive evidence of the credential holder’s having committed one of the following actions:
   1. Permitting or directing any auxiliary personnel or any other person who does not hold the proper credentials to perform veterinary duties involving diagnosis, prescription or surgery, except as allowed pursuant to rule 811—8.5(169);
2. Permitting or directing any auxiliary personnel or any other person to perform any act which would be a legal or ethical violation if committed by a veterinarian;
3. Failing to comply with a lawful child support order as provided in 811—Chapter 13; or
4. Failing to pay any hearing fees and costs within the time specified in the board’s decision;
   c. The board shall not suspend or revoke a license issued by the board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

10.6(2) Grounds applicable to licensed veterinarians only. In addition to the grounds set out in subrule 10.6(1), without regard as to whether the board has determined that injury has occurred, a licensed veterinarian is subject to disciplinary action for the violation of any of the following:
   a. Engaging in unethical conduct which includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12, and which may include acts or offenses in violation of Iowa’s principles of veterinary medical ethics, as adopted in subrule 10.6(3).
   b. Engaging in practice harmful or detrimental to the public which includes, but is not limited to, either of the following:
      (1) The use of a rubber stamp to affix a signature to a prescription. A licensee who is unable, due to a physical disability, to make a written signature or mark may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the licensee’s presence.
      (2) The practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.
   c. Willfully or repeatedly departing from, or failing to conform to, the minimal standard of acceptable and prevailing practice of veterinary medicine which includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12; or committing an act contrary to honesty, justice or good morals, whether the act is committed in the course of practice or otherwise, and whether the act is committed within or without this state, where such act substantially relates to the practice of veterinary medicine. It is not necessary for grounds to exist under this paragraph that actual injury to a patient be established.
   d. Indiscriminately or promiscuously prescribing, administering or dispensing any drug; or prescribing, administering or dispensing any drug for other than a lawful purpose.
   e. Negligently failing to exercise due care in the delegation of veterinary services to or in supervision of employees or other individuals, whether or not injury results.

10.6(3) Principles of veterinary medical ethics. Veterinarians are members of a scholarly profession who have earned academic degrees from comprehensive universities or similar educational institutions. Licensed veterinarians practice veterinary medicine in a variety of situations and circumstances. Exemplary professional conduct upholds the dignity of the veterinary profession. All Iowa-licensed veterinarians are expected to adhere to these principles of veterinary medical ethics adopted by the board.
   a. General ethics principles.
      (1) A veterinarian shall be influenced only by the welfare of the patient, the needs of the client, the safety of the public, and the need to uphold the public trust vested in the veterinary profession and shall avoid conflicts of interest or the appearance thereof.
      (2) A veterinarian shall provide competent veterinary medical clinical care under the terms of a veterinarian-client-patient relationship (VCPR), with compassion and respect for animal welfare and human health.
      (3) A veterinarian shall uphold the standards of professionalism, be honest in all professional interactions, and report veterinarians who are deficient in character or competence to the appropriate entities.
(4) A veterinarian shall not willfully violate the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board, or other law of this state, another state, or the United States, which relates to the practice of veterinary medicine.

(5) A veterinarian shall respect the rights of clients, colleagues, and other health professionals and shall safeguard medical information within the confines of the law.

(6) A veterinarian shall continue to study, apply, and advance scientific knowledge; maintain a commitment to veterinary medical education; make relevant information available to clients, colleagues, and the public; and obtain consultation or referral when indicated.

(7) A veterinarian shall, in the provision of appropriate patient care, be free to choose whom to serve, with whom to associate, and the environment in which to provide veterinary medical care.

(8) A veterinarian shall not advertise a specialty or claim to be a specialist when not a diplomate of a veterinary specialty organization recognized by the AVMA.

b. Veterinarian-client-patient relationship ethics. A veterinarian shall not engage in the practice of veterinary medicine without a valid VCPR as defined in these rules.

c. Veterinarian-client communication: documentation of informed consent.

(1) A veterinarian shall explain to clients how any diagnostic tests offered would help diagnose a patient’s medical condition.

(2) A veterinarian is responsible for professional communication directly with the client regarding diagnosis, options for treatment(s), expected cost of treatment(s), expected outcome of treatment(s), and the potential risks associated with each treatment regimen, as well as the client’s ability to decline treatment(s). Client consent for the treatment(s) shall be documented in the patient’s medical records. A veterinary assistant may communicate the information listed in this subparagraph to the client under the direct supervision of an Iowa-licensed veterinarian.

(3) If a veterinarian does not have the expertise or the necessary equipment and facilities to adequately diagnose or treat a patient, the veterinarian shall offer a referral to another veterinarian or referral center where the diagnosis or treatment can be performed.

d. Veterinary medical records.

(1) Complete, accurate and legible medical records that are considered to meet the prevailing standard of the practice of veterinary medicine are required by the board. Medical records are vitally important in any board review of a complaint against a licensee.

(2) Any controlled substances administered to a patient must be written into the patient’s medical record, which shall include the drug name, the date the drug was administered, the amount of drug administered, the frequency of drug administration, and the prescribing (and administering, if different) veterinarian’s name, as required by rules 811—12.2(169) to 811—12.4(169). This requirement is in addition to regulations and requirements promulgated by the Iowa board of pharmacy, U.S. Drug Enforcement Administration, and any other applicable governmental agency. Violating or failing to comply with a state or federal law or regulation relating to the storing, labeling, prescribing, or dispensing of controlled substances shall be deemed unethical.

(3) Humane euthanasia of animals is an ethical veterinary procedure. A veterinarian can refuse to perform euthanasia.

e. Client and patient privacy rights.

(1) A veterinarian shall protect and respect the privacy rights of clients, colleagues, and other health professionals. A veterinarian shall not reveal confidential medical records or other medical information unless authorized to do so by law.

(2) It is unethical to place photographs or information regarding a patient, a client, or a client’s premises on social media or other public platforms without the consent of the owner, unless the patient, client, or client’s premises cannot be identified by its marking and unless all personally identifying information has been removed from the photograph. Use of photographs and information for didactic purposes is permitted with client consent or after removal of any information that would identify the client or patient.

f. Professional behavior.
(1) A veterinarian shall be honest in all professional interactions while respecting the rights of clients, colleagues, and other health professionals. A veterinarian must be honest and fair in relations with others, and a veterinarian shall not engage in fraud, misrepresentation, or deceit, including by material omission, in accordance with Iowa Code section 169.13(1)”a. “

(2) A veterinarian must not defame or injure the professional standing or reputation of another veterinarian in a false or misleading manner. Any complaints about behavior of a veterinarian that may violate the principles of veterinary medical ethics should be addressed through the board in an appropriate and timely manner.

(3) It is unethical to knowingly aid anyone who is engaged in the unlicensed practice of veterinary medicine in accordance with Iowa Code section 169.13(1)”e.”

(4) A veterinarian who is impaired due to substance abuse or mental health or physical conditions as set forth in Iowa Code section 169.13(1)”h” must not act in the capacity of a veterinarian and shall quickly seek medical treatment from qualified organizations or individuals.

10.6(4) Recommended practices for veterinarians.

a. A veterinarian is encouraged to participate in activities contributing to the improvement of the community and the betterment of public health. The responsibilities of the veterinary profession extend beyond individual patients and clients to society in general.

b. A veterinarian is encouraged to participate in the political process to seek changes to laws and regulations that are contrary to the best interests of the patient, the client and public health.

c. A veterinarian is encouraged to make the veterinarian’s knowledge available to the community and to provide the veterinarian’s services for activities that protect public health.

d. A veterinarian is encouraged to view, evaluate, and treat all individual persons in any professional activity or circumstance in which the veterinarian may be involved solely as individuals on the basis of the person’s personal abilities, qualifications and character.

[ARC 5062C, IAB 6/17/20, effective 7/22/20; ARC 6212C, IAB 2/23/22, effective 3/30/22]

811—10.7(17A,169,272C) Sanctions. The board has authority to impose the following disciplinary sanctions:

1. Revoke a credential.
2. Suspend a credential until further order of the board or for a specified period.
3. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
4. Impose a period of probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental examination.
8. Impose civil penalties not to exceed $10,000.
9. Issue a citation and warning.
10. Impose such other sanctions allowed by law as may be appropriate.

811—10.8(17A,169,272C) Panel of specialists. The board may appoint a panel of veterinarians who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee shall appoint the presiding officer.

10.8(1) The executive secretary shall set the date, time, and location of the hearing and make proper notification to all parties.

10.8(2) The panel of specialists shall:

a. Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.

b. Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.

c. Receive opening statements from the parties.
d. Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the credential holder.
e. Question the witnesses.
f. Receive closing statements from the parties.
g. Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.

811—10.9(17A,169,272C) Informal settlement. Pursuant to the provisions of Iowa Code sections 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to commencement of contested case proceedings. The secretary or designee may negotiate with the credential holder regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

811—10.10(17A,169,272C) Voluntary surrender. A voluntary surrender of credentials may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board.

811—10.11(17A,169,272C) Application for reinstatement. A person whose credential has been suspended, revoked, or voluntarily surrendered may apply to the board for reinstatement in accordance with the terms and conditions of the order.

10.11(1) If the credential was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be made until one year has elapsed from the date of the order.

10.11(2) The application shall allege facts and circumstances which will enable the board to determine that the basis for the sanction or voluntary surrender no longer exists, and that it is in the public interest to reinstate the credential. The burden of proof to establish these facts shall rest with the petitioner.

10.11(3) The hearing in an application for reinstatement is a contested case within the meaning of Iowa Code section 17A.12.

10.11(4) The order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions for reinstating the credential may be imposed.

811—10.12 Reserved.

811—10.13(17A,169,272C) Contested case proceedings. The following rules apply to board activities which are initiated upon determination of probable cause and result in the issuance of a notice of hearing.

811—10.14(17A) Definitions. Except where otherwise specifically defined by law:

“Contested case” means a proceeding defined by Iowa Code section 17A.2(5).

“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 chairperson of the board 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 board did not preside.

811—10.15(17A) Time requirements.

10.15(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

10.15(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.
811—10.16(17A) Notice of hearing. The board shall issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

10.16(1) The date, time, and location of the hearing shall be set by the board. The credential holder shall be notified at least 30 days prior to the scheduled hearing.

10.16(2) Notification shall be in writing delivered either by personal service as in civil actions or by certified mail with return receipt requested. When the credential holder cannot be located:

a. An affidavit shall be prepared outlining the measures taken to attempt service, and shall become a part of the record when a notice cannot be delivered by personal service or certified mail, return receipt requested.

b. Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the credential holder. The newspaper will be selected by the secretary or designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

811—10.17(17A) Presiding officer. Disciplinary hearings shall be conducted by the board pursuant to Iowa Code section 272C.6. The chairperson of the board shall designate the presiding officer in accordance with the provisions of Iowa Code section 17A.11.

10.17(1) For nondisciplinary proceedings, 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 after service of a notice of hearing.

10.17(2) The executive secretary may deny the request upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency 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 witness 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.

h. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

10.17(3) The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

10.17(4) All rulings by an administrative law judge are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

10.17(5) Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

811—10.18(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

811—10.19(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone 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.
811—10.20(17A) Disqualification.

10.20(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, 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, secretary 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.

10.20(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 agency 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 Iowa Code section 17A.17(3) and subrules 10.20(3) and 10.32(9).

10.20(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.

10.20(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.20(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(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 811—10.34(17A).

811—10.21(17A) Consolidation—severance.

10.21(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.

10.21(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.
811—10.22(17A) Pleadings.

10.22(1) Pleadings may be required by rule, by notice of hearing, or by order of the presiding officer.

10.22(2) Petition.

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

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provision of statutes and rules involved;

(3) The relief demanded and the facts and laws relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner’s attorney.

10.22(3) Answer. An answer may be filed within 20 days of service of the petition. 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 pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person.

Any allegation in the petition 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.

811—10.23(17A) Service and filing of pleadings and other papers.

10.23(1) When service 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 such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency. 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.

10.23(2) Service—how 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.

10.23(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board.

10.23(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

10.23(5) 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 (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail or state interoffice mail.

(Date) (Signature)

811—10.24(17A) Discovery.

10.24(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.
10.24(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 10.24(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

10.24(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

811—10.25(17A) Subpoenas.

10.25(1) Issuance.

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. 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. The request shall include the name, address, and telephone number of the requesting party.

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.

10.25(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.

811—10.26(17A) Motions.

10.26(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.

10.26(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 rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

10.26(3) The presiding officer may schedule oral argument on any motion.

10.26(4) Motions pertaining to the hearing 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 rule of the agency or an order of the presiding officer.

811—10.27(17A) Prehearing conference.

10.27(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 board office to all parties. For good cause the presiding officer may permit variances from this rule.

10.27(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses the party anticipates will testify at 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 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.

c. 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.

10.27(3) In addition to the requirements of subrule 10.27(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.

10.27(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.

811—10.28(17A) Continuances. The executive secretary shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive secretary only in situations involving extenuating, extraordinary, or emergency circumstances.

811—10.29(17A) Hearing procedures.

10.29(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

10.29(2) All objections shall be timely made and stated on the record.

10.29(3) Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

10.29(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.

10.29(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

10.29(6) Witnesses may be sequestered during the hearing.

10.29(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.

811—10.30(17A) Evidence.

10.30(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.

10.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

10.30(3) Evidence in the proceeding shall be confined to those issues 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.

10.30(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.
10.30(5) Any party may object to specific evidence or may request limits on 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.

10.30(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 order of proof and inserted in the record.

811—10.31(17A) Default.

10.31(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.

10.31(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.

10.31(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, 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 an appeal of a decision on the merits is timely initiated within the time provided by rule 811—10.36(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 attached to the motion.

10.31(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.

10.31(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.

10.31(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.

10.31(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 811—10.34(17A).

811—10.32(17A) Ex parte communication.

10.32(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 such 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 agency 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 10.20(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
of opportunity or means of notification. Where permitted, oral communications may be initiated through telephone conference call, which includes all parties or their representatives. 10.32(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. 10.32(6) The executive secretary or 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 subrule 10.20(1) or other law and they comply with subrule 10.32(1). 10.32(7) Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party 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 811—10.29(17A). 10.32(8) Disclosure of prohibited communications. A presiding officer who received 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. 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. 10.32(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, 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. 10.32(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 agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the board’s executive secretary for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

811—10.33(17A) Recording costs. Upon request, the board 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 such recording, unless otherwise provided by law.
811—10.34(17A) Final decision. When the board presides over reception of the evidence at the hearing, its decision is a final decision.

10.34(1) When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact shall be considered by the board at the earliest feasible time. The decision of the board is a final decision.

10.34(2) A final decision in a contested case proceeding shall be in writing and include findings of fact and conclusions of law, separately stated.

a. Findings of fact shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.

b. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact.

c. Conclusions of law shall be supported by cited authority or by a reasoned opinion.

10.34(3) The decision or order shall be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12.

10.34(4) The final decision is a public record pursuant to Iowa Code section 272C.6(4).

811—10.35(17A) Appeals.

10.35(1) Appeal by party. Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance, in accordance with Iowa Code section 17A.19.

10.35(2) Review. The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

10.35(3) Notice of appeal. An appeal of a decision or order is initiated by filing a timely notice of appeal with the board. 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;

e. The grounds for relief.

10.35(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 nonappealing party, within 15 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

10.35(5) Scheduling. The board of veterinary medicine shall issue a schedule for consideration of the appeal.

10.35(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 an oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

811—10.36(17A) Applications for rehearing.

10.36(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

10.36(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 agency decision on the existing record and
whether, on the basis of the grounds enumerated in subrule 10.36(4), the applicant requests an opportunity to submit additional evidence.

10.36(3) **Time of filing.** The application shall be filed with the board office within 20 days after issuance of the final decision.

10.36(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 board shall serve copies on all parties.

10.36(5) **Disposition.** Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

811—10.37(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.

811—10.38(17A) **Emergency adjudicative proceedings.**

10.38(1) **Necessary emergency action.** To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a credential in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board 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 board is necessary to avoid the immediate danger.

10.38(2) **Issuance.** 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:

a. Personal delivery;
b. Certified mail, return receipt requested, to the last address on file with the board;
c. Certified mail to the last address on file with the board;
d. First-class mail to the last address on file with the board; or
e. Fax. 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 board orders be sent by fax and has provided a fax number for that purpose.

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

10.38(3) **Oral notice.** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

10.38(4) **Completion of proceedings.** Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.
811—10.39(272C) Disciplinary hearing—fees and costs.

10.39(1) Definitions. As used in this rule in relation to a formal disciplinary action filed by the board against a credential holder:

“Deposition” means the testimony of a person taken pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“Expenses” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“Medical examination fees” means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a credential holder when the examination or evaluation is conducted pursuant to an order of the board.

“Record” means the proceedings of the hearing including, but not limited to, the transcript and any documentary evidence admitted or offered at the hearing.

“Transcript” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“Witness fees” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purpose of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72, as applicable.

10.39(2) Disciplinary hearing fee. The board may charge a fee not to exceed the amount authorized in Iowa Code section 272C.6 for conducting a disciplinary hearing which results in disciplinary action taken against the credential holder by the board. An order assessing a fee shall be included as part of the board’s final decision. The order shall direct the credential holder to deliver payment directly to the department of agriculture and land stewardship as provided in subrule 10.39(6).

10.39(3) Recovery of related hearing costs. The board may also recover from the credential holder the costs for transcripts, witness fees and expenses, depositions, and medical examination fees, if disciplinary action is taken. The board may assess these costs in the manner it deems most equitable in accordance with the following:

a. Transcript costs. The board may assess the transcript costs against the credential holder pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

   (1) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

   (2) In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process.

b. Witness fees and expenses. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a credential holder the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa, provided that the costs are calculated as follows:

   (1) The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

   (2) The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

   (3) The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.
(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue guidelines currently in effect.

c. Deposition costs. Deposition costs for purposes of allocating costs against a credential holder include only those deposition costs incurred by the state of Iowa. The credential holder is directly responsible for the payment of deposition costs incurred by the credential holder.

(1) The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

(2) If the deposition is of an expert witness, the deposition costs include a reasonable fee for an expert witness. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with the deposition, including the time spent in travel to and from the deposition, but excluding time spent in preparation for the deposition.

d. Medical examination fees. All costs of physical or mental examinations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case shall be paid directly by the credential holder.

10.39(4) Certification of reimbursable costs. Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the secretary shall certify any reimbursable costs to the board. The secretary shall calculate the specific costs, certify the costs calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of the filing.

10.39(5) Assessment of fees and costs. A final decision of the board imposing disciplinary action against a credential holder shall include the amount of any fee assessed. If the board also assesses costs against the credential holder, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the credential holder.

a. A party shall file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection shall be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application shall be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

10.39(6) Payment of fees and costs. Payment for fees and costs assessed pursuant to this rule shall be made in the form of a check or money order made payable to the state of Iowa and delivered by the credential holder to the department of agriculture and land stewardship.

10.39(7) Failure to make payment. Failure of a credential holder to pay any fees and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall constitute grounds for disciplinary action.

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.

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# VOTER REGISTRATION COMMISSION[821]

Prior to 3/21/90, Voter Registration Commission[845]

## CHAPTER 1
ORGANIZATION, PURPOSE, PROCEDURES AND DEFINITIONS

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## CHAPTER 2
VOTER REGISTRATION FORMS, ACCEPTABILITY, REGISTRATION DATES, AND EFFECTIVE DATES

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821—8.1(48A) Transmission of electronic voter registration applications. Every agency that registers voters in a paperless manner shall transmit a file of registration applications to the registrar on a daily basis. The file shall contain all voter registration applications collected by the agency during the previous working day.

[ARC 2376C, IAB 2/3/16, effective 1/5/16]

821—8.2(48A) Data elements of paperless voter registration transactions. The file specified in rule 821—8.1(48A) shall contain the following information:

1. The number of the county in which the applicant lives;
2. The applicant’s Iowa driver’s license number, if the applicant has one. If not, the applicant’s Iowa department of transportation-issued nonoperator’s identification card number. If the applicant has neither, the last four digits of the applicant’s social security number;
3. The applicant’s date of birth;
4. The applicant’s gender;
5. The applicant’s full name;
6. The applicant’s residence address;
7. The applicant’s mailing address, if different from the residence address;
8. The date of the transaction;
9. The applicant’s party affiliation, if any;
10. The applicant’s telephone number;
11. An identifier of the agency receiving the application;
12. The jurisdiction in which the applicant was previously registered to vote;
13. The name under which the applicant was previously registered to vote;
14. Audit information sufficient to allow the agency to identify the transaction and retrieve and reproduce the application, including the applicant’s signature.

821—8.3(48A) File specifications. Technical requirements, including the record format, and the method of file transfer, shall be decided upon and agreed to by the registrar and the agency submitting electronic voter registration data.

821—8.4(48A) Technical requirements for electronic signatures. Agencies which accept and collect paperless voter registration transactions shall maintain an electronic “copy” of the document, including the applicant’s signature. The design of the system shall be such that no change to the document can be made and the document can be reproduced in hard copy when necessary.

821—8.5(48A) Transmission of paper voter registration forms. Voter registration applications or changes accepted on paper documents by agencies shall be sent to the appropriate county commissioner by courier, U.S. mail, or other reliable carrier not later than the Friday of the week in which the document is received by the agency. Nothing in these rules shall be construed to require an agency to be open for business on the last day of registration for an election.

[ARC 6199C, IAB 2/23/22, effective 3/30/22]

These rules are intended to implement Iowa Code sections 48A.11 and 48A.21.

[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/10/04]
[Filed Emergency After Notice ARC 2376C (Notice ARC 2160C, IAB 9/30/15; Amended Notice ARC 2246C, IAB 11/25/15), IAB 2/3/16, effective 1/5/16]
[Filed ARC 6199C (Notice ARC 6005C, IAB 10/20/21), IAB 2/23/22, effective 3/30/22]
CHAPTER 10
NOTICE TO VOTERS WITHOUT ACTIVITY IN FOUR YEARS IN COUNTIES USING NCOA RECORDS; TO ALL VOTERS IN OTHER COUNTIES

821—10.1(48A) NCOA county commissioner determines nonactivity; sends notices.

10.1(1) During the first quarter of the calendar year following a general election, the state registrar shall examine voter registration records to identify those voters without activity during the period following the previous general election and for whom no information has been reported in NCOA data. For the purpose of this subrule, “activity” means voter-initiated activity such as any registration application, including an application which duplicates existing information; a notice of change of name, address, mailing address, or party affiliation; a vote in any election; or the mailing of a notice pursuant to subrule 10.1(2). A registered voter shall not be sent a notice and return card under this subrule if the registered voter was not 18 years of age on the date of the most recent general election.

10.1(2) The state registrar shall coordinate the printing and mailing of the required no-activity notifications. The state registrar shall notify the commissioners when the notifications have been mailed. Any postage-paid preaddressed return cards returned by voters will be sent back to the counties, not to the state registrar. The state registrar shall send one notification to each voter identified based on the criteria in subrule 10.1(1). The notice shall be mailed to the voter’s mailing address.

[ARC 7883B, IAB 7/1/09, effective 7/1/09; ARC 6199C, IAB 2/23/22, effective 3/30/22]

821—10.2(48A) Fees. The state registrar shall charge the counties for the costs of the no-activity process, including matching the records and the printing of and postage for the mailing. The fees charged to the counties shall reflect actual costs to the state registrar.

[ARC 6199C, IAB 2/23/22, effective 3/30/22]

821—10.3(48A) Voter record made inactive. A registered voter receiving a mailing pursuant to rule 821—10.1(48A) shall be made “inactive.”

These rules are intended to implement Iowa Code subsections 48A.28(2) and (3).

[Filed 7/16/04, Notice 6/9/04—published 8/4/04, effective 9/10/04]
[Filed Emergency ARC 7883B, IAB 7/1/09, effective 7/1/09]
[Filed ARC 6199C (Notice ARC 6005C, IAB 10/20/21), IAB 2/23/22, effective 3/30/22]
CHAPTER 12
VOTER NOTIFICATIONS

821—12.1(48A) Primary and general election polling place change—voter notification required. When a change is made from the usual polling place for the precinct or when the precinct polling place used for the primary or general election is different from that used for the precinct at the last preceding primary or general election, the county commissioner shall mail every registered voter who is affected by the change a notification informing the voter of the change. The county commissioner may either send a notice of the change to each household at which an impacted voter is registered or send notice of the change to each registered voter. The notification shall be sent not more than 20 nor less than 7 days before the day on which the election is to be held.

[ARC 9943B, IAB 12/28/11, effective 2/1/12; ARC 6199C, IAB 2/23/22, effective 3/30/22]

This rule is intended to implement Iowa Code section 49.23.

[Filed ARC 9943B (Notice ARC 9810B, IAB 10/19/11), IAB 12/28/11, effective 2/1/12]
[Filed ARC 6199C (Notice ARC 6005C, IAB 10/20/21), IAB 2/23/22, effective 3/30/22]