LABOR SERVICES DIVISION[875]

[Prior to 11/19/97, see Labor Services Division[347]]

CHAPTER 1
DESCRIPTION OF ORGANIZATION AND PROCEDURES BEFORE THE DIVISION

DIVISION I
ADMINISTRATION

1.1(91) Definitions
1.2(91) Scope and application
1.3(91) Department of workforce development, division of labor services
1.4 to 1.10 Reserved

DIVISION II
OPEN RECORDS AND FAIR INFORMATION PRACTICES

1.11(22,91) General provisions
1.12(22,91) Request for access to records
1.13(22,91) Access to confidential records
1.14(22,91) Requests for treatment of a record as a confidential record and withholding from examination
1.15(22,91) Procedure by which additions, dissents, or objections may be entered into certain records
1.16(22,91) Consent to disclosure by the subject of a confidential record
1.17(22,91) Disclosure without the consent of the subject
1.18(22,91,77GA,ch1105) Availability of records
1.19(22,91) Routine uses
1.20(22,91) Release to a subject
1.21(22,91) Notice to suppliers of information
1.22(22,91) Data processing systems comparison
1.23(22,91) Personally identifiable information
1.24 to 1.30 Reserved

DIVISION III
RULE-MAKING PROCEDURES

1.31(17A) Applicability
1.32(17A) Advice on possible rules before notice of proposed rule adoption
1.33(17A) Public rule-making docket
1.34(17A) Notice of proposed rule making
1.35(17A) Public participation
1.36(17A) Regulatory analysis
1.37(17A,25B) Fiscal impact statement
1.38(17A) Time and manner of rule adoption
1.39(17A) Variance between adopted rule and published notice of proposed rule adoption
1.40(17A) Exemptions from public rule-making procedures
1.41(17A) Concise statement of reasons
1.42(17A,89) Contents, style, and form of rule
1.43(17A) Agency rule-making record
1.44(17A) Filing of rules
1.45(17A) Effectiveness of rules prior to publication
1.46(17A) General statements of policy
1.47(17A) Review by agency of rules
1.48 and 1.49 Reserved

DIVISION IV
DECLARATORY ORDERS

1.50(17A)	Petition for declaratory order
1.51(17A)	Notice of petition
1.52(17A)	Intervention
1.53(17A)	Briefs
1.54(17A)	Inquiries
1.55(17A)	Service and filing of petitions and other papers
1.56(17A)	Consideration
1.57(17A)	Action on petition
1.58(17A)	Refusal to issue order
1.59(17A)	Contents of declaratory order—effective date
1.60(17A)	Copies of orders
1.61(17A)	Effect of a declaratory order
1.62 to 1.64	Reserved

DIVISION V
CONTESTED CASES

1.65(17A)	Scope and applicability
1.66(17A)	Definitions
1.67(17A)	Time requirements
1.68(17A)	Requests for contested case proceeding
1.69(17A)	Notice of hearing
1.70(17A)	Presiding officer
1.71(17A)	Waiver of procedures
1.72(17A)	Disqualification
1.73(17A)	Consolidation—severance
1.74(17A)	Answer
1.75(17A)	Pleadings, service and filing
1.76(17A)	Discovery
1.77(17A)	Subpoenas
1.78(17A)	Motions
1.79(17A)	Prehearing conference
1.80(17A)	Continuances
1.81(17A)	Withdrawals
1.82(17A)	Intervention
1.83(17A)	Hearing procedures
1.84(17A)	Evidence
1.85(17A)	Default
1.86(17A)	Ex parte communication
1.87(17A)	Recording costs
1.88(17A)	Interlocutory appeals
1.89(17A)	Final decision—nonlicense decision
1.90(17A)	Final decision—license decision
1.91(17A)	Appeals and review
1.92(17A)	Applications for rehearing
1.93(17A)	Stays of agency actions
1.94(17A)	No factual dispute contested cases
1.95(17A)	Emergency adjudicative proceedings
1.96 to 1.98	Reserved

DIVISION VI
INTEREST, FEES AND CHARGES

1.99(17A,91) Interest
1.100 Reserved

DIVISION VII
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

1.101(17A,91) Scope
1.102(17A,91) Petitions
1.103(17A,91) Notice and acknowledgment
1.104(17A,91) Review
1.105(17A,91) Ruling
1.106(17A,91) Public availability
1.107(17A,91) Cancellation
1.108(17A,91) Violations
1.109(17A,91) Appeals

IOWA OCCUPATIONAL
SAFETY AND HEALTH

CHAPTER 2
IOSH ENFORCEMENT, IOSH RESEARCH AND STATISTICS,
IOSH CONSULTATION AND EDUCATION

2.1(88) Scope and application
2.2(88) IOSH enforcement
2.3(88) IOSH research and statistics
2.4(88) IOSH private sector consultative services
2.5(88) IOSH public sector consultative services
2.6(88) IOSH education

CHAPTER 3
INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

3.1(88) Posting of notice; availability of the Act, regulations and applicable standards
3.2(88) Objection to inspection
3.3(88) Entry not a waiver
3.4(88) Advance notice of inspections
3.5(88) Conduct of inspections
3.6(88) Representatives of employers and employees
3.7(88) Complaints by employees
3.8(88) Trade or governmental secrets
3.9(88) Imminent danger
3.10(88) Consultation with employees
3.11(88) Citations
3.12(88) Informal conferences
3.13(88) Petitions for modification of abatement date
3.14 to 3.18 Reserved
3.19(88) Abatement verification
3.20(88) Policy regarding employee rescue activities
3.21 Reserved
3.22(88,89B) Additional hazard communication training requirements
3.23(88) Definitions
3.24(88) Occupational safety and health bureau forms

CHAPTER 4
RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

4.1(88) Purpose and scope
4.2(88) First reports of injury
4.3(88) Record-keeping regulations

CHAPTER 5
RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS, TOLERANCES AND EXEMPTIONS

5.1(88) Purpose and scope
5.2(88) Definitions
5.3 Reserved
5.4(88) Effect of variances
5.5(88) Notice of a granted variance
5.6(88) Form of documents; subscription; copies
5.7(88) Temporary variance
5.8(88) Permanent variance
5.9(88) Special variance
5.10(88) Modification and revocation of rules or orders
5.11(88) Action on applications
5.12(88) Requests for hearings on applications
5.13(88) Consolidation of proceedings
5.14(88) Notice of hearing
5.15(88) Manner of service
5.16(88) Hearing examiner; powers and duties
5.17(88) Prehearing conferences
5.18(88) Consent findings and rules or orders
5.19(88) Discovery
5.20(88) Hearings
5.21(88) Decisions of hearing examiner
5.22(88) Motion for summary decision
5.23(88) Summary decision
5.24(88) Finality for purposes of judicial review

CHAPTERS 6 and 7
Reserved

CHAPTER 8
CONSULTATIVE SERVICES

8.1(88) Purpose and scope
8.2(88) Definitions
8.3(88) Requesting and scheduling of on-site consultation visit
8.4 and 8.5 Reserved
8.6(88) Conducting a visit
8.7(88) Relationship to enforcement

CHAPTER 9
DISCRIMINATION AGAINST EMPLOYEES

9.1(88) Introductory statement
9.2(88) Purpose of this chapter
9.3(88) General requirements of Iowa Code section 88.9(3)
9.4(88) Persons prohibited from discriminating
9.5(88) Persons protected by Iowa Code section 88.9(3)

9.6(88) Unprotected activities distinguished
9.7 and 9.8 Reserved
9.9(88) Complaints under or related to the Act
9.10(88) Proceedings under or related to the Act
9.11(88) Testimony
9.12(88) Exercise of any right afforded by the Act
9.13 and 9.14 Reserved
9.15(88) Filing of complaint for discrimination
9.16(88) Notice of determination
9.17(88) Withdrawal of complaint
9.18(88) Arbitration or other agency proceedings
9.19 and 9.20 Reserved
9.21(88) Walkaround pay disputes
9.22(88) Employee refusal to comply with safety rules

CHAPTER 10
GENERAL INDUSTRY SAFETY AND HEALTH RULES
10.1(88) Definitions
10.2(88) Applicability of standards
10.3(88) Incorporation by reference
10.4(88) Exception for hexavalent chromium exposure in metal and surface finishing job shops
10.5 and 10.6 Reserved
10.7(88) Definitions and requirements for a nationally recognized testing laboratory
10.8 to 10.11 Reserved
10.12(88) Construction work
10.13 to 10.18 Reserved
10.19(88) Special provisions for air contaminants
10.20(88) Adoption by reference

CHAPTERS 11 to 25
Reserved

CHAPTER 26
CONSTRUCTION SAFETY AND HEALTH RULES
26.1(88) Adoption by reference

CHAPTER 27
Reserved

CHAPTER 28
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE
28.1(88) Adoption by reference

CHAPTER 29
SANITATION AND SHELTER RULES FOR RAILROAD EMPLOYEES
29.1(88) Definitions
29.2(88) Water supply
29.3(88) Toilets
29.4(88) Eating places and lunchrooms
29.5(88) Sleeping accommodations
29.6(88) Cleanliness and maintenance
29.7(88) Conflicts resolved

CHAPTER 30
Reserved

CHILD LABOR

CHAPTER 31
Reserved

CHAPTER 32
CHILD LABOR

32.1(92)	Definitions
32.2(92)	Permits and certificates of age
32.3 and 32.4	Reserved
32.5(92)	Other work
32.6	Reserved
32.7(92)	Workweek
32.8(92)	Terms
32.9 and 32.10	Reserved
32.11(92)	Civil penalty calculation
32.12(92)	Civil penalty procedures
32.13 to 32.16	Reserved
32.17(92)	Definitions

CHAPTER 33
Reserved

CHAPTER 34
CIVIL PENALTIES

34.1(91A)	Civil penalties for Iowa Code chapter 91A violations
34.2(91A)	Investigation
34.3(91A)	Calculation of penalty
34.4(91A)	Settlement opportunity
34.5(91A)	Notice of penalty assessment; contested case proceedings
34.6(91A)	Judicial review

CHAPTER 35
WAGE PAYMENT COLLECTION

35.1(91A)	Definitions
35.2(91A)	Right of private action
35.3(91A)	Filing a claim
35.4(91A)	Investigation
35.5(91A)	Legal action on wage claims

CHAPTER 36
DISCRIMINATION AGAINST EMPLOYEES

36.1(91A)	Definitions
36.2(91A)	Employee rights
36.3(91A)	Purposes
36.4(91A)	General requirements
36.5(91A)	Unprotected activities distinguished
36.6(91A)	Complaint under or related to the Act
36.7(91A)	Proceedings under or related to the Act
36.8(91A)	Filing of complaint for discrimination or discharge
36.9(91A)	Withdrawal of complaints

36.10(91A) Arbitration or other agency proceedings
36.11(91A) Decision of the commissioner

CHAPTER 37
Reserved

CHAPTER 38
EMPLOYMENT AGENCY LICENSING

38.1(94A) Definitions
38.2(94A) Application and license
38.3(94A) Non-employment agency activity
38.4(94A) Complaints
38.5(17A,94A,252J) Denials, revocations, reprimands and suspensions
38.6(94A) Permissible fees charged by agency
38.7 Reserved
38.8(94A) Contracts and fee schedules

CHAPTERS 39 to 50
Reserved

RAILROADS

CHAPTERS 51 to 60
Reserved

AMUSEMENT PARKS AND RIDES

CHAPTER 61
ADMINISTRATION OF IOWA CODE CHAPTER 88A

61.1(88A) Purpose, scope and definitions
61.2(88A) Administration
61.3(88A) Exemptions

CHAPTER 62
SAFETY RULES FOR AMUSEMENT RIDES, AMUSEMENT DEVICES, AND CONCESSION BOOTHS

62.1(88A) Purpose, scope and definitions
62.2(88A) Design criteria
62.3(88A) Concession booth requirements
62.4(88A) Walking surfaces, access and egress
62.5 and 62.6 Reserved
62.7(88A) Signal systems
62.8(88A) Hazardous materials
62.9 Reserved
62.10(88A) General environment
62.11(88A) Medical and first aid
62.12(88A) Fire protection
62.13(88A) Compressed gas and air equipment
62.14 Reserved
62.15(88A) Machinery and machine guarding
62.16 Reserved
62.17(88A) Welding, cutting and brazing
62.18(88A) Operations
62.19(88A) Electrical

CHAPTERS 63 and 64
Reserved

ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

CHAPTER 65
ELEVATOR SAFETY BOARD ADMINISTRATIVE AND REGULATORY AUTHORITY

65.1(89A) Definitions
65.2(89A) Purpose and authority of board
65.3(21,89A) Organization of board
65.4(21,89A) Public meetings
65.5(89A) Official communications

CHAPTER 66
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES
BY THE ELEVATOR SAFETY BOARD

66.1(17A,89A) Waivers of rules
66.2(17A,89A) Applicability of rule
66.3(17A,89A) Criteria for waiver or variance
66.4(17A,89A) Filing of petition
66.5(17A,89A) Content of petition
66.6(17A,89A) Additional information
66.7(17A,89A) Notice
66.8(17A,89A) Board review procedures
66.9(17A,89A) Hearing procedures
66.10(17A,89A) Ruling
66.11(17A,89A) Public availability
66.12(17A,89A) Summary reports
66.13(17A,89A) Cancellation of a waiver
66.14(17A,89A) Violations
66.15(17A,89A) Defense
66.16(17A,89A) Judicial review

CHAPTER 67
ELEVATOR SAFETY BOARD PETITIONS FOR RULE MAKING

67.1(17A,89A) Petitions for rule making
67.2(17A,89A) Briefs
67.3(17A,89A) Inquiries
67.4(17A,89A) Board review procedures

CHAPTER 68
DECLARATORY ORDERS BY THE ELEVATOR SAFETY BOARD

68.1(17A,89A) Petition for declaratory order
68.2(17A,89A) Notice of petition
68.3(17A,89A) Intervention
68.4(17A,89A) Briefs
68.5(17A,89A) Inquiries
68.6(17A,89A) Service and filing of petitions and other papers
68.7(17A,89A) Board review procedures
68.8 Reserved
68.9(17A,89A) Refusal to issue order
68.10(17A,89A) Contents of declaratory order—effective date
68.11(17A,89A) Copies of orders
68.12(17A,89A) Effect of a declaratory order

CHAPTER 69
CONTESTED CASES BEFORE THE ELEVATOR SAFETY BOARD

69.1(17A,89A) Reconsideration of inspection report
69.2(17A,89A) Appeal to the board
69.3(17A,89A) Informal review
69.4(17A,89A) Delivery of notice
69.5(17A,89A) Contents of notice
69.6 Reserved
69.7(17A,89A) File transmitted to the board
69.8(17A,89A) Legal representation
69.9(17A,89A) Presiding officer
69.10(17A,89A) Service and filing
69.11(17A,89A) Time requirements
69.12(17A,89A) Waiver of procedures
69.13(17A,89A) Telephone and electronic proceedings
69.14(17A,89A) Disqualification
69.15(17A,89A) Consolidation and severance
69.16(17A,89A) Discovery
69.17(17A,89A) Subpoenas in a contested case
69.18(17A,89A) Motions
69.19(17A,89A) Settlements
69.20(17A,89A) Prehearing conference
69.21(17A,89A) Continuances
69.22(17A,89A) Withdrawals
69.23(17A,89A) Hearing procedures
69.24(17A,89A) Evidence
69.25(17A,89A) Ex parte communication
69.26(17A,89A) Interlocutory appeals
69.27(17A,89A) Decisions
69.28(17A,89A) Contested cases with no factual disputes
69.29(17A,89A) Applications for rehearing
69.30(17A,89A) Stays of board actions
69.31(17A,89A) Judicial review

CHAPTER 70
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES OF THE ELEVATOR SAFETY BOARD

70.1(22,89A) Definitions
70.2(22,89A) Statement of policy
70.3(22,89A) Requests for access to records
70.4(22,89A) Access to confidential records
70.5(22,89A) Requests for treatment of a record as a confidential record and its withholding from examination
70.6(22,89A) Procedure by which additions, dissents, or objections may be entered into certain records
70.7(22,89A) Consent to disclosure by the subject of a confidential record
70.8(22,89A) Disclosures without the consent of the subject
70.9(17A,89A) Routine use
70.10(22,89A) Consensual disclosure of confidential records
70.11(22,89A) Release to subject
70.12(21,22,89A) Availability of records
70.13(22,89A) Applicability

70.14(17A,22,89A) Personally identifiable information
70.15(17A,21,22,89A) Other groups of records
70.16(22,89A) Data processing system
70.17(22,89A) Notice to suppliers of information

CHAPTER 71
ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

71.1(89A) Definitions
71.2(89A) Registration of conveyances
71.3(89A) State identification number
71.4(89A) Responsibility for obtaining permits
71.5(89A) Installation permits
71.6(89A) Construction permits
71.7(89A) Operating permits
71.8(89A) Controller upgrade permits
71.9(89A) Alteration permits
71.10(89A) Alterations
71.11(89A) Inspections
71.12(89A,252J,261,272D) Special inspector commissions
71.13(89A) State employees
71.14(89A) Safety tests
71.15(89A) Authorized companies
71.16(89A) Fees
71.17(89A) Publications available for review
71.18(89A) Other regulations affecting elevators
71.19(89A) Accidents
71.20(89A) Temporary removal from service

CHAPTER 72
CONVEYANCES INSTALLED ON OR AFTER JANUARY 1, 1975

72.1(89A) Purpose and scope
72.2(89A) Definitions
72.3(89A) Accommodating the physically disabled
72.4(89A) Electric elevators
72.5(89A) Hydraulic elevators
72.6(89A) Power sidewalk elevators
72.7(89A) Performance-based safety code
72.8(89A) Hand and power dumbwaiters
72.9(89A) Escalators and moving walks
72.10(89A) General requirements
72.11 Reserved
72.12(89A) Wind tower lifts
72.13(89A) Alterations, repairs, replacements and maintenance
72.14 Reserved
72.15(89A) Power-operated special purpose elevators
72.16(89A) Inclined and vertical wheelchair lifts
72.17(89A) Hand-powered elevators
72.18(89A) Accommodating the physically disabled
72.19(89A) Limited-use/limited-application elevators
72.20(89A) Rack and pinion, screw-column elevators
72.21(89A) Inclined elevators
72.22(89A) Material lift elevators

72.23(89A) Elevators used for construction
72.24(89A) Construction personnel hoists
72.25(89A) Alarm bell

CHAPTER 73
CONVEYANCES INSTALLED PRIOR TO JANUARY 1, 1975

73.1(89A) Scope and definitions
73.2(89A) Hoistways
73.3(89A) Car enclosure: Passenger
73.4(89A) Car enclosure: Freight
73.5(89A) Brakes
73.6(89A) Machines
73.7(89A) Electrical protective devices
73.8(89A) Maintenance, repairs and alterations
73.9(89A) Machine rooms
73.10(89A) Pits
73.11(89A) Counterweights
73.12(89A) Car platforms and car slings
73.13(89A) Means of suspension
73.14(89A) Car safeties and speed governors
73.15(89A) Guide rails
73.16(89A) Existing hydraulic elevators
73.17(89A) Existing sidewalk elevators
73.18(89A) Existing hand elevators
73.19(89A) Power-operated special purpose elevators
73.20(89A) Inclined and vertical wheelchair lifts
73.21(89A) Handicapped restricted use elevators
73.22(89A) Escalators
73.23 Reserved
73.24(89A) Dumbwaiters

CHAPTERS 74 to 79
Reserved

BOILERS AND PRESSURE VESSELS

CHAPTER 80
BOILER AND PRESSURE VESSEL BOARD
ADMINISTRATIVE AND REGULATORY AUTHORITY

80.1(89) Definitions
80.2(89) Purpose and authority of board
80.3(89) Organization of board
80.4(21,89) Public meetings
80.5(89) Official communications

CHAPTER 81
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES
BY THE BOILER AND PRESSURE VESSEL BOARD

81.1(17A,89) Waivers of rules
81.2(17A,89) Applicability of rule
81.3(17A,89) Criteria for waiver or variance
81.4(17A,89) Filing of petition
81.5(17A,89) Content of petition
81.6(17A,89) Additional information

81.7(17A,89) Notice
81.8(17A,89) Board review procedures
81.9(17A,89) Hearing procedures
81.10(17A,89) Ruling
81.11(17A,89) Public availability
81.12(17A,89) Summary reports
81.13(17A,89) Cancellation of a waiver
81.14(17A,89) Violations
81.15(17A,89) Defense
81.16(17A,89) Judicial review

CHAPTER 82
BOILER AND PRESSURE VESSEL BOARD PETITIONS FOR RULE MAKING

82.1(17A,89) Petitions for rule making
82.2(17A,89) Briefs
82.3(17A,89) Inquiries
82.4(17A,89) Board review procedures

CHAPTER 83
DECLARATORY ORDERS BY THE BOILER AND PRESSURE VESSEL BOARD

83.1(17A,89) Petition for declaratory order
83.2(17A,89) Notice of petition
83.3(17A,89) Intervention
83.4(17A,89) Briefs
83.5(17A,89) Inquiries
83.6(17A,89) Service and filing of petitions and other papers
83.7(17A,89) Board review procedures
83.8 Reserved
83.9(17A,89) Refusal to issue order
83.10(17A,89) Contents of declaratory order—effective date
83.11(17A,89) Copies of orders
83.12(17A,89) Effect of a declaratory order

CHAPTER 84
CONTESTED CASES BEFORE THE BOILER AND PRESSURE VESSEL BOARD

84.1(17A,89) Reconsideration of inspection report
84.2(17A,89) Appeal to the board
84.3(17A,89) Informal review
84.4(17A,89) Delivery of notice
84.5(17A,89) Contents of notice
84.6(17A,89) Scope of issues
84.7(17A,89) File transmitted to the board
84.8(17A,89) Legal representation
84.9(17A,89) Presiding officer
84.10(17A,89) Service and filing
84.11(17A,89) Time requirements
84.12(17A,89) Waiver of procedures
84.13(17A,89) Telephone and electronic proceedings
84.14(17A,89) Disqualification
84.15(17A,89) Consolidation and severance
84.16(17A,89) Discovery
84.17(17A,89) Subpoenas in a contested case
84.18(17A,89) Motions

84.19(17A,89) Settlements
84.20(17A,89) Prehearing conference
84.21(17A,89) Continuances
84.22(17A,89) Withdrawals
84.23(17A,89) Hearing procedures
84.24(17A,89) Evidence
84.25(17A,89) Ex parte communication
84.26(17A,89) Interlocutory appeals
84.27(17A,89) Decisions
84.28(17A,89) Contested cases with no factual disputes
84.29(17A,89) Applications for rehearing
84.30(17A,89) Stays of board actions
84.31(17A,89) Judicial review

CHAPTER 85
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
OF THE BOILER AND PRESSURE VESSEL BOARD

85.1(22,89) Definitions
85.2(22,89) Statement of policy
85.3(22,89) Requests for access to records
85.4(22,89) Access to confidential records
85.5(22,89) Requests for treatment of a record as a confidential record and its withholding from examination
85.6(22,89) Procedure by which additions, dissents, or objections may be entered into certain records
85.7(22,89) Consent to disclosure by the subject of a confidential record
85.8(22,89) Disclosures without the consent of the subject
85.9(17A,89) Routine use
85.10(22,89) Consensual disclosure of confidential records
85.11(22,89) Release to subject
85.12(21,22,89) Availability of records
85.13(22,89) Applicability
85.14(17A,22,89) Personally identifiable information
85.15(17A,22,89) Other groups of records
85.16(22,89) Data processing system
85.17(22,89) Notice to suppliers of information

CHAPTERS 86 to 89
Reserved

CHAPTER 90
ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

90.1(89) Purpose and scope
90.2(89,261,252J,272D) Definitions
90.3(89) Iowa identification numbers
90.4 Reserved
90.5(89) Preinspection owner or user preparation
90.6(89) Inspections
90.7(89) Fees
90.8(89) Certificate
90.9(89,252J,261) Special inspector commissions
90.10(89) Quality reviews, surveys and audits
90.11(89) Notification of explosion

90.12(89) Publications available for review
90.13(89) Notice prior to installation
90.14(89) Temporary boilers
90.15(89) Conversion of a power boiler to a low-pressure boiler

CHAPTER 91
GENERAL REQUIREMENTS FOR ALL OBJECTS

91.1(89) Codes and code cases adopted by reference
91.2(89) Safety appliance
91.3(89) Pressure-reducing valves
91.4(89) Blowoff equipment
91.5(89) Location of discharge piping outlets
91.6(89) Pipe, valve, and fitting requirements
91.7 to 91.9 Reserved
91.10(89) Clearance
91.11(89) Fall protection
91.12(89) Exit from rooms containing objects
91.13(89) Air and ventilation
91.14(89) Condensate return tank
91.15(89) Conditions not covered
91.16 Reserved
91.17(89) English language and U.S. customary units required
91.18(89) National Board registration
91.19(89) ASME stamp
91.20(89) CSD-1 Report

CHAPTER 92
POWER BOILERS

92.1(89) Scope
92.2(89) Codes adopted by reference
92.3 Reserved
92.4(89) Maximum allowable working pressure for steel boilers
92.5(89) Maximum allowable working pressure and temperature for cast iron headers and mud drums
92.6(89) Rivets
92.7(89) Safety valves
92.8(89) Boiler feeding
92.9(89) Water level indicators
92.10(89) Pressure gages
92.11(89) Steam stop valves
92.12(89) Blowoff connection

CHAPTER 93
MINIATURE POWER BOILERS INSTALLED PRIOR TO SEPTEMBER 20, 2006

93.1(89) Scope
93.2(89) Codes adopted by reference
93.3(89) Maximum working pressure
93.4(89) Safety valves
93.5(89) Steam stop valves
93.6(89) Water gages
93.7(89) Feedwater supply
93.8(89) Blowoff

93.9(89) Washout openings
93.10(89) Fixtures and fittings

CHAPTER 94
STEAM HEATING BOILERS, HOT WATER HEATING BOILERS AND
HOT WATER SUPPLY BOILERS

94.1(89) Scope
94.2(89) Codes adopted by reference
94.3(89) General requirements
94.4(89) Steam heating boilers installed before July 1, 1960
94.5(89) Hot water heating boilers installed before July 1, 1960
94.6(89) Hot water supply boilers installed before July 1, 1960

CHAPTER 95
WATER HEATERS

95.1(89) Scope
95.2(89) Recognized standard
95.3(89) Installation
95.4(89) Temperature and pressure relief valves
95.5(89) Shutoff valves prohibited
95.6 Reserved
95.7(89) Stop valves
95.8(89) Carbonization
95.9(89) Leaks
95.10(89) Flues
95.11(89) Tanks
95.12(89) Galvanized pipes, valves, and fittings

CHAPTER 96
UNFIRED STEAM PRESSURE VESSELS

96.1(89) Codes adopted by reference
96.2(89) Objects installed prior to July 1, 1983

CHAPTERS 97 to 109
Reserved

RIGHT TO KNOW

CHAPTER 110
HAZARDOUS CHEMICAL RISKS RIGHT TO KNOW—
GENERAL PROVISIONS

110.1(88,89B) Purpose, scope and application
110.2(88,89B) Definitions
110.3(88,89B) Hazard determination
110.4(88,89B) Labels and other forms of warning
110.5(88,89B) Material safety data sheets
110.6(88,89B) Trade secrets

CHAPTERS 111 to 129
Reserved

CHAPTER 130
COMMUNITY RIGHT TO KNOW

130.1(89B) Employer's duty
130.2(89B) Records accessibility

130.3(89B) Application for exemption
130.4(89B) Burden of proof and criteria
130.5(89B) Formal ruling
130.6(89B) Request for information
130.7(89B) Filing with division
130.8(89B) Grounds for complaint against the employer
130.9(89B) Investigation or inspection upon complaint
130.10(89B) Order to comply
130.11(30,89B) Relationship to Emergency Planning and Community Right-to-know Act
130.12(30,89B) Information to county libraries

CHAPTERS 131 to 139
Reserved

CHAPTER 140
PUBLIC SAFETY/EMERGENCY RESPONSE RIGHT TO KNOW
140.1(89B) Signs required and adoption by reference
140.2(89B) Employer variance applications
140.3(89B) Agreement between an employer and fire department
140.4(89B) Significant amounts
140.5(89B) Information submitted to local fire department
140.6(89B) Recommended communications
140.7(89B) Procedure for noncompliance
140.8(89B) Notice of noncompliance
140.9(30,89B) Relationship to Emergency Planning and Community Right-to-know Act

CHAPTERS 141 to 149
Reserved

CONSTRUCTION—REGISTRATION AND BONDING

CHAPTER 150
CONSTRUCTION CONTRACTOR REGISTRATION
150.1(91C) Scope
150.2(91C) Definitions
150.3(91C) Registration required
150.4(91C) Application
150.5(91C) Amendments to application
150.6(91C) Fee
150.7(91C) Registration number issuance
150.8(91C) Workers' compensation insurance cancellation notifications
150.9(91C) Investigations and complaints
150.10(91C) Citations/penalties and appeal hearings
150.11(91C) Revocation of registrations and appeal hearings
150.12(91C) Concurrent actions
150.13 to 150.15 Reserved
150.16(91C) Bond release

CHAPTERS 151 to 154
Reserved

CHAPTER 155
ASBESTOS REMOVAL AND ENCAPSULATION

155.1(88B) Definitions
155.2(88B) Permit application procedures
155.3(88B) Other asbestos regulations
155.4(88B) Asbestos project records
155.5(88B) Ten-day notices
155.6(88B) License application procedures
155.7(88B) Duplicate permits and licenses
155.8(17A,88B,252J,261) Denial, suspension and revocation
155.9(17A,88B) Contested cases

CHAPTER 156
BIDDER PREFERENCES IN GOVERNMENT CONTRACTING

156.1(73A) Purpose, scope and definitions
156.2(73A) Reporting of resident status of bidders
156.3(73A) Application of preference
156.4(73A) Complaints regarding alleged violations of the Act
156.5(73A) Nonresident bidder record-keeping requirements
156.6(73A) Investigations; determination of civil penalty
156.7(73A) Remedies
156.8(73A) Compliance with federal law
156.9(73A) Severability

CHAPTERS 157 to 159
Reserved

CHAPTER 160
EMPLOYER REQUIREMENTS RELATING TO
NON-ENGLISH SPEAKING EMPLOYEES

160.1(91E) Purpose and scope
160.2(91E) Definitions
160.3(91E) Comprehension of employment
160.4(91E) Interpreters
160.5(91E) Community services referral agent
160.6(91E) Active recruitment of non-English speaking employees
160.7(91E) Employee's return to location of recruitment
160.8(91E) Inspections and investigations
160.9(91E) Exemptions
160.10(91E) Enforcement and penalties

CHAPTERS 161 to 168
Reserved

ATHLETICS COMMISSIONER

CHAPTER 169
GENERAL REQUIREMENTS FOR ATHLETIC EVENTS

169.1(90A) Scope and application
169.2(90A) Prohibited events
169.3(90A) Advance notice of event
169.4(90A) Event license
169.5(90A) Promoter responsibilities
169.6(90A) Taxes

CHAPTER 170
OPERATIONS OF ADVISORY BOARD

170.1(90A) Scope
170.2(90A) Membership
170.3(90A) Time of meetings
170.4(90A) Notification of meetings
170.5(90A) Attendance and participation by the public
170.6(90A) Quorum and voting requirements
170.7(90A) Minutes, transcripts and recording of meetings

CHAPTER 171
GRANT APPLICATIONS AND AWARDS

171.1(90A) Scope
171.2(90A) Application process
171.3(90A) Grant process
171.4(90A) Evaluation
171.5(90A) Termination
171.6(90A) Financial management
171.7(90A) Adjustments and collections

CHAPTER 172
PROFESSIONAL WRESTLING

172.1(90A) Limitation of bouts
172.2(90A) Fall
172.3(90A) Out-of-bounds
172.4(90A) Disqualification
172.5(90A) Failure to break hold
172.6(90A) Prohibition against hanging on
172.7(90A) Abusing referee
172.8(90A) Prohibited materials in ring
172.9 Reserved
172.10(90A) Time between falls
172.11(90A) Contestants' arrival
172.12 Reserved
172.13(90A) Separation of boxing and wrestling
172.14 Reserved
172.15(90A) Health of wrestler
172.16(90A) Wrestling outside of ring
172.17(90A) Advertising

CHAPTER 173
PROFESSIONAL BOXING

173.1(90A) Limitation of rounds
173.2(90A) Weight restrictions
173.3 Reserved
173.4(90A) Injury
173.5(90A) Knockdown
173.6(90A) Limitation on number of bouts
173.7(90A) Contestants' arrival
173.8(90A) Persons allowed in the ring
173.9(90A) Protection of hands
173.10(90A) Scoring
173.11(90A) Gloves

173.12(90A) Proper attire
173.13(90A) Use of substances
173.14(90A) "Down"
173.15(90A) Foul
173.16(90A) Penalties
173.17(90A) Weight classes
173.18(90A) Attendance of commissioner
173.19(90A) Weighing of contestants
173.20 Reserved
173.21(90A) General requirements
173.22 Reserved
173.23(90A) Excessive coaching
173.24(90A) Abusive language
173.25 and 173.26 Reserved
173.27(90A) Ring requirements
173.28(90A) Ring posts
173.29(90A) Ropes
173.30(90A) Ring floor
173.31(90A) Bell
173.32(90A) Gloves
173.33(90A) Referee's duties
173.34(90A) Chief second
173.35(90A) Naming referee
173.36(90A) Reasons for stopping bout
173.37(90A) Forfeit of purse
173.38 Reserved
173.39(90A) Shaking hands
173.40(90A) Assessing fouls
173.41(90A) Delaying prohibited
173.42(90A) Count
173.43(90A) Intentional foul
173.44(90A) Use of the ropes
173.45(90A) Attending ring physician
173.46(90A) Technical knockout
173.47(90A) Timekeeper
173.48(90A) Seconds
173.49(90A) Requirements for seconds
173.50(90A) Use of water
173.51(90A) Stopping the fight
173.52(90A) Removing objects from ring
173.53(90A) Decision
173.54 Reserved
173.55(90A) Boxer registration

CHAPTER 174
ELIMINATION TOURNAMENTS

174.1(90A) Purpose and scope
174.2(90A) Bouts, rounds and rest periods
174.3(90A) Protective equipment
174.4(90A) Weight restrictions
174.5(90A) Down
174.6(90A) Suspension

174.7(90A) Training requirements
174.8(90A) Judges
174.9 Reserved
174.10(90A) Impartiality of timekeeper
174.11(90A) Ringside

CHAPTER 175
AMATEUR BOXING

175.1(90A) Purpose
175.2(90A) Application
175.3(90A) Verification
175.4(90A) Forms

CHAPTER 176
PROFESSIONAL KICKBOXING

176.1(90A) Scope and purpose
176.2(90A) WKA rules adopted by reference
176.3(90A) Professional boxing rules adopted by reference
176.4(90A) Additional provisions

CHAPTER 177
MIXED MARTIAL ARTS

177.1(90A) Definitions
177.2 Reserved
177.3(90A) Equipment specifications
177.4(90A) Event
177.5(90A) Contestants
177.6(90A) Procedural rules
177.7(90A) Decision
177.8(90A) Forfeit of purse

CHAPTERS 178 to 214
Reserved

MINIMUM WAGE

CHAPTER 215
MINIMUM WAGE SCOPE AND COVERAGE

215.1(91D) Requirement to pay
215.2(91D) Initial employment wage rate
215.3(91D) Definitions
215.4(91D) Exceptions
215.5(91D) Interpretative guidelines

CHAPTER 216
RECORDS TO BE KEPT BY EMPLOYERS

216.1(91D) Form of records—scope of rules
216.2(91D) Employees subject to minimum wage
216.3(91D) Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to 875—subrule 215.4(1)
216.4(91D) Posting of notices
216.5(91D) Records to be preserved three years

216.6(91D) Records to be preserved two years
216.7(91D) Place for keeping records and their availability for inspection
216.8(91D) Computations and reports
216.9(91D) Petitions for exceptions
216.10 Reserved

EMPLOYEES SUBJECT TO MISCELLANEOUS EXEMPTIONS

216.11 to 216.26 Reserved
216.27(91D) Board, lodging, or other facilities
216.28(91D) Tipped employees
216.29 Reserved
216.30(91D) Learners, apprentices, messengers, students, or persons with a disability employed under special certificates as provided in the federal Fair Labor Standards Act, 29 U.S.C. 214
216.31(91D) Industrial homeworkers
216.32 Reserved
216.33(91D) Employees employed in agriculture pursuant to 875—subrule 215.4(6)

CHAPTER 217
WAGE PAYMENTS

217.1 Reserved
217.2(91D) Purpose and scope
217.3(91D) "Reasonable cost"
217.4(91D) Determinations of "reasonable cost"
217.5(91D) Determinations of "fair value"
217.6(91D) Effects of collective bargaining agreements
217.7(91D) Request for review of tip credit
217.8 to 217.24 Reserved
217.25(91D) Introductory statement
217.26 Reserved
217.27(91D) Payment in cash or its equivalent required
217.28 Reserved
217.29(91D) Board, lodging, or other facilities
217.30(91D) "Furnished" to the employee
217.31(91D) "Customarily" furnished
217.32(91D) "Other facilities"
217.33 and 217.34 Reserved
217.35(91D) "Free and clear" payment; "kickbacks"
217.36(91D) Payment where additions or deductions are involved
217.37(91D) Offsets
217.38(91D) Amounts deducted for taxes
217.39(91D) Payments to third persons pursuant to court order
217.40(91D) Payments to employee's assignee
217.41 to 217.49 Reserved
217.50(91D) Payments to tipped employees
217.51(91D) Conditions for taking tip credits in making wage payments
217.52(91D) General characteristics of "tips"
217.53(91D) Payments which constitute tips
217.54(91D) Tip pooling
217.55(91D) Examples of amounts not received as tips
217.56(91D) "More than $30 a month in tips"
217.57(91D) Receiving the minimum amount "customarily and regularly"

217.58(91D) Initial and terminal months
217.59(91D) The tip wage credit

CHAPTER 218
EMPLOYEES EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESPERSON

218.1(91D) Executive
218.2(91D) Administrative
218.3(91D) Professional
218.4 Reserved
218.5(91D) Outside salesperson
218.6(91D) Special provision for motion picture producing industry
218.7 to 218.100 Reserved

BONA FIDE EXECUTIVE CAPACITY

218.101(91D) General
218.102(91D) Management
218.103(91D) Primary duty
218.104(91D) Department or subdivision
218.105(91D) Two or more other employees
218.106(91D) Authority to hire or fire
218.107(91D) Discretionary powers
218.108(91D) Work directly and closely related
218.109(91D) Emergencies
218.110(91D) Occasional tasks
218.111(91D) Nonexempt work generally
218.112(91D) Percentage limitations on nonexempt work
218.113(91D) Sole-charge exception
218.114(91D) Exception for owners of 20 percent interest
218.115(91D) Working supervisor
218.116(91D) Trainees, executive
218.117(91D) Amount of salary required
218.118(91D) Salary basis
218.119(91D) Special proviso for high-salaried executives
218.120 to 218.200 Reserved

BONA FIDE ADMINISTRATIVE CAPACITY

218.201(91D) Types of administrative employees
218.202 Reserved
218.203(91D) Nonmanual work
218.204 Reserved
218.205(91D) Directly related to management policies or general business operations
218.206(91D) Primary duty
218.207(91D) Discretion and independent judgment
218.208 Reserved
218.209(91D) Percentage limitations on nonexempt work
218.210(91D) Trainees, administrative
218.211(91D) Amount of salary or fees required
218.212(91D) Salary basis
218.213(91D) Fee basis
218.214(91D) Special proviso for high-salaried administrative employees

218.215(91D) Elementary or secondary schools and other educational establishments and institutions
218.216 to 218.300 Reserved

BONA FIDE PROFESSIONAL CAPACITY

218.301(91D) General
218.302(91D) Learned professions
218.303(91D) Artistic professions
218.304(91D) Primary duty
218.305(91D) Discretion and judgment
218.306(91D) Predominantly intellectual and varied
218.307(91D) Essential part of and necessarily incident to
218.308 Reserved
218.309(91D) Twenty percent nonexempt work limitation
218.310(91D) Trainees, professional
218.311(91D) Amount of salary or fees required
218.312(91D) Salary basis
218.313(91D) Fee basis
218.314(91D) Exception for physicians, lawyers, and teachers
218.315(91D) Special proviso for high-salaried professional employees
218.316 to 218.499 Reserved

OUTSIDE SALESPERSON

218.500(91D) Definition of "outside salesperson"
218.501(91D) Making sales or obtaining orders
218.502(91D) Away from employer's place of business
218.503(91D) Incidental to and in conjunction with sales work
218.504(91D) Promotion work
218.505(91D) Driver salespersons
218.506(91D) Nonexempt work generally
218.507(91D) Twenty percent limitation on nonexempt work
218.508(91D) Trainees, outside salespersons
218.509 to 218.599 Reserved

SPECIAL PROBLEMS

218.600(91D) Combination exemptions
218.601(91D) Special provision for motion picture producing industry
218.602(91D) Special proviso concerning executive and administrative employees in multistore retailing operations

CHAPTER 219
APPLICATION OF THE FAIR LABOR STANDARDS ACT
TO DOMESTIC SERVICE

219.1 Reserved
219.2(91D) Purpose and scope
219.3(91D) Domestic service employment
219.4(91D) Babysitting services
219.5(91D) Casual basis
219.6(91D) Companionship services for the aged or infirm
219.7 to 219.99 Reserved
219.100(91D) Application of minimum wage and overtime provisions
219.101(91D) Domestic service employment
219.102(91D) Live-in domestic service employees
219.103(91D) Babysitting services in general

219.104(91D) Babysitting services performed on a casual basis
219.105(91D) Individuals performing babysitting services in their own homes
219.106(91D) Companionship services for the aged or infirm
219.107(91D) Yard maintenance workers
219.108 Reserved
219.109(91D) Third-party employment
219.110(91D) Record-keeping requirements

CHAPTER 220
APPLICATION OF THE FAIR LABOR STANDARDS ACT
TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

220.1(91D) Definitions
220.2(91D) Purpose and scope
220.3 to 220.10 Reserved
220.11(91D) Exclusion for elected officials and their appointees
220.12(91D) Exclusion for employees of legislative branches
220.13 to 220.19 Reserved
220.20(91D) Introduction
220.21(91D) Compensatory time and compensatory time off
220.22 to 220.26 Reserved
220.27(91D) Payments for unused compensatory time
220.28(91D) Other compensatory time
220.29 Reserved

OTHER EXEMPTIONS

220.30 Reserved
220.31(91D) Substitution—federal Fair Labor Standards Act, 29 U.S.C. 207(p)(3)
220.32 to 220.49 Reserved

RECORD KEEPING

220.50(91D) Records to be kept of compensatory time
220.51 to 220.99 Reserved

VOLUNTEERS

220.100(91D) General
220.101(91D) “Volunteer” defined
220.102(91D) Employment by the same public agency
220.103(91D) “Same type of services” defined
220.104(91D) Private individuals who volunteer services to public agencies
220.105(91D) Mutual aid agreements
220.106(91D) Payment of expenses, benefits, or fees
220.107 to 220.199 Reserved

FIRE PROTECTION AND LAW ENFORCEMENT
EMPLOYEES OF PUBLIC AGENCIES

220.200 to 220.220 Reserved
220.221(91D) Compensable hours of work
220.222(91D) Sleep time
220.223(91D) Meal time
220.224 Reserved
220.225(91D) Early relief
220.226(91D) Training time

CHAPTER 1
DESCRIPTION OF ORGANIZATION AND PROCEDURES BEFORE THE DIVISION

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

DIVISION I
ADMINISTRATION

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

"Commissioner" means the labor commissioner of the division of labor services or designee.

"Division" means the division of labor services of the department of workforce development.

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

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

875—1.4 to **1.10** Reserved.

DIVISION II
OPEN RECORDS AND FAIR INFORMATION PRACTICES

875—1.11(22,91) General provisions.

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

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

a. Require the division to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

b. Make available to the general public a record which would otherwise not be available to the general public under Iowa Code chapter 22.

c. Govern a record in the possession of the division which is governed by the rules of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

e. Make available records compiled by the division in reasonable anticipation of court litigation or formal administrative proceedings. The availability of these records to the general public or to any subject individual or party to the litigation or proceeding shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the division.

f. Apply to records which are not yet in existence.

g. Require the division to create, compile, or procure a record solely for the purpose of making it available.

h. Limit distribution of materials created or obtained by the division for the purpose of public distribution such as publications and lending materials.

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

1.11(4) *Definitions.*

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

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

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

"Division" means the division of labor services.

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

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

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

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

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

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

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

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

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

a. Searching for, collecting, and copying a voluminous amount of separate and distinct records included in a single request, especially if both confidential and open records are included.

b. Retrieving a record from archival storage.

c. Any of the purposes authorized by Iowa Code subsections 22.8(4) and 22.10(4).

d. Specialized reproduction of records such as but not limited to videotapes and audiotapes.

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

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

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

1.12(7) *Fees.*

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

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

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

d. *Payment.*

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

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

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

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

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

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

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

a. The name and title or position of the custodian responsible for the denial; and

b. A brief statement of the reasons for the denial.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.17(5) To the legislative services agency under Iowa Code section 2A.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Records or portions of records which are exempt from disclosure pursuant to Iowa Code section 22.7.

b. Records or portions of records which are protected by Iowa Code section 88.1, 88.6, 88.12, 88.14, or 88.16.

c. Records or portions of records containing social security numbers which are protected by 42 U.S.C. Section 405(c)(2)(C)(viii).

d. Records or portions of records containing tax information which are protected by 26 U.S.C. Section 7213(a)(2) or Iowa Code section 422.20 or 422.72.

e. Records or portions of records which are protected pursuant to Iowa Code section 515A.13.

f. Pursuant to Iowa Code sections 17A.2 and 17A.3, those portions of division staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by division staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the division.

g. Identifying details and trade secrets in final orders, decisions and opinions to the extent permitted by Iowa Code subsection 17A.3(1).

h. Records or portions of records containing attorney work product or attorney-client communications, or which are otherwise privileged pursuant to Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), rules of evidence, case law, and the Code of Professional Responsibility.

i. Minutes of closed meetings of a government body pursuant to Iowa Code section 21.5(4).

j. Information protected by 42 U.S.C. 11044(a) or by Iowa Code sections 89B.12 and 89B.13.

k. Records of the bureau of labor statistics which were created or obtained pursuant to federal grants if release of the records would cause the denial of federal funds.

l. Information protected by 1998 Iowa Acts, chapter 1105.

m. Any other information made confidential by law.

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

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

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

875—1.20(22,91) Release to a subject.

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

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

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

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

d. As otherwise authorized by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.23(8) Personally identifiable information concerning boiler special inspectors against whom disciplinary action has been taken or attempted is collected pursuant to Iowa Code chapter 89.

The record system is stored on paper and contains information concerning division investigations, reprimands, suspensions, revocations, denials, and related litigation.

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

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

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

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

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

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

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

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

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

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

875—1.24 to **1.30** Reserved.

DIVISION III
RULE-MAKING PROCEDURES

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

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

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

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

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

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

a. The subject matter of the proposed rule;

b. A citation to all published notices relating to the proceeding;

c. Where written submissions on the proposed rule may be inspected;

d. The time during which written submissions may be made;

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;

f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;

g. The current status of the proposed rule and any division determinations with respect thereto;

h. Any known timetable for the division's decisions or other action in the proceeding;

i. The date of the rule's adoption;

j. The date of the rule's filing, indexing, and publication;

k. The date on which the rule will become effective; and

l. Where the rule-making record may be inspected.

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

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

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the division will include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of

the proposed rule, and the range of possible choices being considered by the division for the resolution of each of those issues.

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

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

875—1.35(17A) Public participation.

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

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

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

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

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

1.35(3) *Conduct of oral proceedings.*

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

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

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

d. *Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the division at least three business days prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall

indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and will be recorded by stenographic or electronic means.

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

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

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

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

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

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

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

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

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

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

875—1.36(17A) Regulatory analysis.

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

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

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

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

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

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

a. The administrative rules coordinator;

b. The administrative rules review committee.

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

a. The administrative rules review committee;

b. The administrative rules coordinator;

c. At least 25 or more persons who sign the request provided that each represents a different small business;

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice;

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

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

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

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

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

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

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

1.40(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary,

impracticable, or contrary to the public interest with respect to each and every member of the defined class:

a. Rules implementing legislation which will become effective before the normal procedures could be followed.

b. National consensus standards and federal occupational safety and health regulations are adopted by reference. These documents are published and available to the public in advance of publication of a Notice of Intended Action by the division. The commissioner is required to adopt federal occupational safety and health regulations pursuant to Iowa Code subsection 88.5(1). At times, these rules, when adopted, are effective upon publication in the Iowa Administrative Bulletin.

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

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

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

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

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the division's reasons for overruling the arguments made against the rule.

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

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

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

a. The date the division adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the division in its discretion decides to include the reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the division in its discretion decides to include such reasons; and

g. The effective date of the rule.

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

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

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

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

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

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

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

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

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

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

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of the division's submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the division's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the division, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the division and considered by the labor commissioner, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the division is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the division will identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendments of, or repeal or suspension of, the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection; and

j. A copy of any executive order concerning the rule.

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

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

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

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

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

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

1.45(2) *Special notice.* When the division makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the division will

employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the division to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the division of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, or personal notice or electronic means.

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

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

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

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

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

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

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

875—1.48 and **1.49** Reserved.

DIVISION IV
DECLARATORY ORDERS

875—1.50(17A) Petition for declaratory order. Any person may file a petition with the division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division. A petition is deemed filed when it is received by the division. The

division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form.

DIVISION OF LABOR SERVICES

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

The petition must provide the following information:

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

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

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

875—1.52(17A) Intervention.

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

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

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

DIVISION OF LABOR SERVICES

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

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

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

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

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

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

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

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

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

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

875—1.57(17A) Action on petition.

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

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

875—1.58(17A) Refusal to issue order.

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

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other division or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the division to determine whether a statute is unconstitutional on its face.

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

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

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

A declaratory order is effective on the date of issuance.

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

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

875—1.62 to **1.64** Reserved.

DIVISION V
CONTESTED CASES

875—1.65(17A) Scope and applicability. This division applies to contested case proceedings conducted by the division of labor services. Rules of the employment appeal board are applicable

for some contested cases regarding boiler safety, elevator safety, and occupational safety and health inspections and contractor registration investigations.

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

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

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

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

"Presiding officer" means the labor commissioner or designee.

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

875—1.67(17A) Time requirements.

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

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

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

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

875—1.69(17A) Notice of hearing.

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

a. Personal service as provided in the Iowa Rules of Civil Procedure;

b. Certified mail, return receipt requested;

c. First-class mail;

d. Publication, as provided in the Iowa Rules of Civil Procedure; or

e. If requested, by facsimile, or electronic transmission.

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

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as attorney for the commissioner or division and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement. The parties are encouraged to meet informally to resolve issues that might culminate in a resolution of issues in the contested case;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer;

i. A statement that a party, at its own expense, may be represented by counsel in the contested case; and

j. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 1.70(17A), that the presiding officer be an administrative law judge.

875—1.70(17A) Presiding officer.

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

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

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

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

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

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

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

f. The request was not timely filed.

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

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

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

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

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

875—1.72(17A) Disqualification.

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

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

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

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

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

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

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

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

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

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

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

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

875—1.73(17A) Consolidation—severance.

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

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

875—1.74(17A) Answer.

1.74(1) *Answer.*

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

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

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the party and the party's attorney, if any.

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

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

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

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

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

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

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

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

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

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

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

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

875—1.76(17A) Discovery.

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

1.76(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule

1.76(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

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

875—1.77(17A) Subpoenas.

1.77(1) *Issuance.*

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

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

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

875—1.78(17A) Motions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

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

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

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

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

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

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

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

b. State the specific reasons for the request; and

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

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

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

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

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

875—1.82(17A) Intervention.

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

1.82(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered,

a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner.

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

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

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

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

875—1.83(17A) Hearing procedures.

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

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

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

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

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

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

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

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

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

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

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

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

1.83(8) Telephone or video conferencing proceedings. The presiding officer may resolve preliminary procedural motions by telephone or video conference in which all parties have an opportunity to participate. Other telephone or video proceedings may be held with the consent of all

parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

875—1.84(17A) Evidence.

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

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

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

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

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

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

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

875—1.85(17A) Default.

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

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

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

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

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

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

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

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

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

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

875—1.86(17A) Ex parte communication.

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

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

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

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

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

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

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

1.86(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written

responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

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

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

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

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

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

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

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

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

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

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

1. Exoneration.
2. Revocation of license.
3. Suspension of license until further order or for a specific period.
4. Nonrenewal of license.
5. Prohibited permanently from engaging in specified procedures or practices until further order or for a specific period.

6. Probation.
7. Require additional education or training.
8. Require reexamination.
9. Order a physical examination.
10. Impose civil penalty.
11. Issue citation.
12. Such other sanctions allowed by law as may be appropriate.

875—1.91(17A) Appeals and review.

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

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

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

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought; and

e. The grounds for relief.

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

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

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

875—1.92(17A) Applications for rehearing.

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

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

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

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

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

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

1.93(1) *When available.*

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

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

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

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

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

875—1.95(17A) Emergency adjudicative proceedings.

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

a. Whether there has been a sufficient factual investigation to ensure that the division is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the division is necessary to avoid the immediate danger.

1.95(2) *Issuance of order.*

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

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

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the division;

(3) Certified mail to the last address on file with the division;

(4) First-class mail to the last address on file with the division; or

(5) Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that division orders be sent by fax and has provided a fax number for that purpose.

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

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

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

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

875—1.96 to **1.98** Reserved.

DIVISION VI
INTEREST, FEES AND CHARGES

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

875—1.100 Reserved.

DIVISION VII
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

875—1.101(17A,91) Scope.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

875—1.105(17A,91) Ruling.

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

1.105(2) If a waiver or variance is granted, it shall be drafted to provide the narrowest exception possible to the provisions of the rule. The ruling shall be in writing and shall include the reasons for granting or denying the petition and, if approved, the time period during which the waiver or variance is

effective. The division may place any condition on a waiver or variance that the division finds desirable to protect the public health, safety, and welfare.

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

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

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

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

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

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

[Filed 12/15/75, Notice 10/6/75—published 12/29/75, effective 2/4/76]
[Filed emergency 11/20/79—published 12/12/79, effective 11/20/79]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/29/88, Notice 3/23/88—published 5/18/88, effective 7/1/88]
[Filed 8/30/88, Notice 5/18/88—published 9/21/88, effective 11/1/88]
[Filed 12/9/88, Notice 10/5/88—published 12/28/88, effective 2/15/89]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed emergency 4/26/89—published 5/17/89, effective 4/26/89]
[Filed 10/26/89, Notice 6/28/89—published 11/15/89, effective 12/29/89]
[Filed emergency 6/8/90—published 6/27/90, effective 7/1/90]
[Filed 11/9/90, Notice 6/27/90—published 11/28/90, effective 1/2/91]
[Filed 11/13/98, Notice 9/23/98—published 12/2/98, effective 1/6/99]
[Filed emergency 5/4/99 after Notice 3/24/99—published 6/2/99, effective 7/1/99]
[Filed 7/20/00, Notice 1/26/00—published 8/9/00, effective 9/13/00]
[Filed 11/20/01, Notice 6/13/01—published 12/12/01, effective 1/16/02]
[Filed 6/14/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed 4/16/07, Notice 2/28/07—published 5/9/07, effective 6/13/07]

IOWA OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 2
IOSH ENFORCEMENT, IOSH RESEARCH AND STATISTICS, IOSH CONSULTATION AND EDUCATION

[Prior to 9/24/86, Labor, Bureau of [530] Ch 2]
[Prior to 10/7/98, see 347—Ch 2]

875—2.1(88) Scope and application. This chapter describes the procedures, functions, and personnel of the bureaus and sections of the division of labor services of the department of workforce development: (1) IOSH Enforcement; (2) IOSH Research and Statistics; (3) IOSH Private Sector Consultative Services; (4) IOSH Public Sector Consultative Services; and (5) IOSH Education. Substantive rules for each of these divisions are located in 875—Chapters 3, 4, 5, 8, 9, 10, 26, 27 and 28.

875—2.2(88) IOSH enforcement. This bureau is responsible for the administration and enforcement of the Iowa Occupational Safety and Health Act, Iowa Code chapter 88 and chapter 455D, division II. It consists of an IOSH administrator (bureau chief), labor safety officers, and compliance safety and health officers.

2.2(1) *Personnel.*

a. IOSH administrator (bureau chief). The bureau chief supervises and coordinates all activities in this bureau. All inquiries to this bureau should be directed to the IOSH administrator.

b. Labor safety officers (LSOs). LSOs are responsible for planning, development, and administration of comprehensive safety and health enforcement programs. The two LSOs direct the two sections: the occupational safety enforcement section and the occupational health enforcement section. They also direct the activities of the compliance safety and health officers.

c. Compliance safety and health officers (CSHOs). CSHOs are responsible for inspecting places of employment for compliance with the Iowa Occupational Safety and Health Act and the Hazardous Chemicals Risks Right to Know Act, division II.

2.2(2) Reserved.

875—2.3(88) IOSH research and statistics. This section of the inspections and reporting bureau is responsible for assisting the commissioner in developing and maintaining an effective program of collection, compilation, and analysis of occupational safety and health statistics including worker illnesses and injuries and activity measures of the division of labor services. It consists of a supervisor of research and statistics and a support staff to assist in the statistical work. All inquiries to this section should be made to the chief of the inspections and reporting bureau.

875—2.4(88) IOSH private sector consultative services. This section of the consultation and education bureau is responsible for developing and directing an on-site consultative service program for employers in the private sector (nongovernmental employers). The section conducts consultations at workplaces to assist employers in the recognition and correction of workplace hazards and potential violations of the Iowa Occupational Safety and Health Act and the Hazardous Chemicals Risks Right to Know Act, division II. The section consists of a chief of the consultation and education bureau and safety and health consultants. The safety and health consultants conduct workplace consultative visits. This section operates under the rules in 875—Chapter 8. All inquiries to this section and requests for services shall be made to the chief of the consultation and education bureau.

875—2.5(88) IOSH public sector consultative services. This section is responsible for conducting on-site consultative visits for public sector employers to assist them in providing safe and healthful workplaces for their employees. The public sector consists of any governmental agency or political subdivision. The section's services are the same as IOSH private sector consultative services. All inquiries to this section should be made to the chief of the consultation and education bureau.

875—2.6(88) IOSH education. This section is responsible for conducting educational programs for any interested group. The dissemination of OSHA publications and materials are handled by this section. All inquiries to this section should be made to the chief of the consultation and education bureau.

[Filed 12/15/75, Notice 10/6/75—published 12/29/75, effective 2/4/76]
[Filed emergency 11/20/79—published 12/12/79, effective 11/20/79]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 11/13/98, Notice 9/23/98—published 12/2/98, effective 1/6/99]

CHAPTER 3
INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/7/98, see 347—Ch 3]

875—3.1(88) Posting of notice; availability of the Act, regulations and applicable standards.

3.1(1) Each employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the department of workforce development, division of labor services. The notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other materials. The notice or notices will be furnished by the occupational safety and health bureau of the division of labor services.

Reproductions or facsimilies of the state poster shall constitute compliance with the posting requirements of Iowa Code section 88.6(3)*"a"* where such reproductions or facsimilies are at least 8½ inches by 14 inches, and the printing size is at least 10 point. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 point.

3.1(2) *"Establishment"* means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, central administrative office or governmental agency or subdivision thereof.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, or the division of labor services. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications and electric, gas and sanitary services, the notice or notices required by this rule shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as harbor workers, traveling salespersons, technicians, engineers, and similar personnel, such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of subrule 3.1(1).

3.1(3) Copies of the Act, all regulations published and all applicable safety and health rules are available from the division of labor services. If an employer has obtained copies of these materials from the division of labor services or the U.S. Department of Labor, the employer shall make them available upon request to any employee or authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or authorized employee representative and the employer.

3.1(4) Any employer failing to comply with the provisions of this rule shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

This rule is intended to implement Iowa Code section 88.6(3)*"a."*

875—3.2(88) Objection to inspection.

3.2(1) Upon a refusal to permit a compliance safety and health officer, in the exercise of official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records or to question any employer, owner, operator, agent or employee, or to permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace, the compliance safety and health officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised. The compliance safety and health officer shall endeavor to ascertain the reason for such refusal and shall immediately report the

refusal and the reason therefor to the labor commissioner or the commissioner's designee. The labor commissioner shall promptly take appropriate action, including compulsory process, if necessary.

3.2(2) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the labor commissioner or a designee, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employer's past practice either implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed, or

b. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

3.2(3) For the purposes of this rule, the term "compulsory process" shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this rule.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.3(88) Entry not a waiver. Any permission to enter, inspect, review records or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation or penalty under the Act. Compliance safety and health officers are not authorized to grant any such waiver.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.4(88) Advance notice of inspections.

3.4(1) Advance notice of inspections may not be given, except in the following situations:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

c. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and

d. In other circumstances where the labor commissioner or the commissioner's designee determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

3.4(2) In situations described in 3.4(1), advance notice of inspections may be given only if authorized by the labor commissioner or the commissioner's designee, except that in cases of apparent imminent danger, advance notice may be given by the compliance safety and health officer without such authorization if the labor commissioner or the commissioner's designee is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of the representative is known to the employer. Upon the request of the employer, the compliance safety and health officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance safety and health officer with the identity of the representative and with other information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection. An employer who fails to comply with the obligation under this rule promptly to inform the authorized representative of employees of the inspection, or to furnish such information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection, may be subject to citation and penalty under Iowa Code section 88.14(3). Advance notice in any of the situations described in subrule 3.4(1) shall not be given more than 24 hours before

the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.14(6).

875—3.5(88) Conduct of inspections.

3.5(1) Inspections shall take place at the times and in the places of employment as the labor commissioner or the commissioner's designee may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records they wish to review. However, such designation of records shall not preclude access to additional records.

3.5(2) Compliance safety and health officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of the establishment. As used herein the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of cameras, audio and videotaping equipment, devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

3.5(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that such actions with flash, spark-producing or other equipment would not be hazardous. Compliance safety and health officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

3.5(4) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

3.5(5) At the conclusion of the inspection, the compliance safety and health officer shall confer with the employer or representative and informally advise the employer or representative of any apparent safety or health violations disclosed by the inspection. During the conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.

3.5(6) Inspections shall be conducted in accordance with the requirements of this chapter.

This rule is intended to implement Iowa Code section 88.6(1).

[**ARC 8522B**, IAB 2/10/10, effective 3/17/10]

875—3.6(88) Representatives of employers and employees.

3.6(1) Compliance safety and health officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the compliance safety and health officer during the physical inspection of any workplace for the purpose of aiding the inspection. A compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany the compliance safety and health officer where the compliance safety and health officer determines that the additional representatives will further aid the inspection. A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

3.6(2) Compliance safety and health officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the representative, the compliance safety and health officer should consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3.6(3) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance safety and health officer, good cause has been shown

why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, the third party may accompany the compliance safety and health officer during the inspection.

3.6(4) Compliance safety and health officers are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.7(88) Complaints by employees.

3.7(1) Any employee or representative of employees who believes that a violation of the Act exists in any workplace where the employee is employed may request an inspection of the workplace by giving notice of the alleged violation to the commissioner or a designee. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or agent by the commissioner's designee no later than at the time of inspection, except that, upon the request of the person giving the notice, the identity and the identities of individual employees referred to therein shall not appear in the copy or on any record published, released, or made available by the division of labor services.

3.7(2) If upon receipt of notification the commissioner or a designee determines that the complaint meets the requirements set forth in subrule 3.7(1), and that there are reasonable grounds to believe that the alleged violation exists, an inspection shall be made as soon as practicable, to determine if the alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

3.7(3) During any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the compliance safety and health officer of any violation of the Act which they have reason to believe exists in the workplace.

875—3.8(88) Trade or governmental secrets.

3.8(1) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal trade or governmental secrets. If the compliance safety and health officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs and environmental samples, shall be labeled "confidential-trade/governmental secrets" and shall not be disclosed except in accordance with the provisions of Iowa Code section 88.12.

3.8(2) Upon the request of an employer, any authorized representative of employees in an area containing trade or governmental secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no representative or employee, the compliance safety and health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.12.

875—3.9(88) Imminent danger. Whenever and as soon as a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, the affected employees and employers shall be notified as provided in Iowa Code section 88.11(3). Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of the danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate the danger.

875—3.10(88) Consultation with employees. Compliance safety and health officers may consult with employees concerning matters of occupational safety and health to the extent that they deem necessary for

the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which the employee has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.11(88) Citations.

3.11(1) Upon receipt of any citation under the Act, the employer shall immediately post the citation or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided in this rule. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, the citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced or covered by other material. Notices of de minimis violations need not be posted.

3.11(2) Each citation or a copy thereof shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect the posting responsibility under this rule unless and until the employment appeal board issues a final order vacating the citation.

3.11(3) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the employment appeal board and the notice may explain the reasons for the contest. The employer may also indicate that specified steps have been taken to abate the violation.

3.11(4) Any employer failing to comply with the provisions of subrules 3.11(1) and 3.11(2) shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

3.11(5) Any employer to whom a citation and notification of penalty have been issued may, under Iowa Code section 88.8, notify the commissioner of the employer's intention to contest the citation or notification of penalty. The notice of contest shall be in writing. The notice of contest shall be received by the division of labor services or postmarked no later than 15 working days after the receipt by the employer of the citation and notification of penalty. The notice of contest may be provided to the division of labor services by mail, personal delivery or facsimile transmission.

This rule is intended to implement Iowa Code sections 88.7(3) and 88.8.

875—3.12(88) Informal conferences. At the request of an affected employer, employee, or representative of employees, the labor commissioner or the commissioner's designee may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at the conference shall be subject to the rules of procedure prescribed by the employment appeal board. If the conference is requested by the employer, an affected employee or the employee's representative shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. Any party may be represented by counsel at the conference. No conference or request for a conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest.

This rule is intended to implement Iowa Code sections 17A.3(1)*"b"* and 17A.10.

875—3.13(88) Petitions for modification of abatement date.

3.13(1) An employer may file a petition for modification of abatement date when the employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond its reasonable control.

3.13(2) A petition for modification of abatement date shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of the action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition and notice informing affected employees of their rights to party status has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with 3.13(3)*"a"* and a certification of the date upon which the posting and service was made. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested additional time to correct one or more of the violations. Affected employees are entitled to participate as parties under terms and conditions established by the Iowa employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file the objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceedings related thereto. Objections shall be sent to the commissioner's designee: IOSH Administrator, Occupational Safety and Health Bureau, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (place reasonably convenient to employees, preferably at or near workplace).

3.13(3) A petition for modification of abatement date shall be filed with the labor commissioner or the commissioner's designee no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of the petition and a notice of employee rights complying with 3.13(2)*"e"* shall be posted in a conspicuous place where all affected employees will have notice thereof or near the location where the violation occurred. The petition and notice of employee rights shall remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition and notice of employee rights.

b. Affected employees or their representatives may file an objection in writing to a petition with the labor commissioner or the commissioner's designee. Failure to file the objection within ten working days of the date of posting of the petition and notice of employee rights or of service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

c. The labor commissioner or the commissioner's designee shall have the authority to approve any filed petition for modification of abatement date. Uncontested petitions shall become final orders pursuant to Iowa Code section 88.8.

d. The labor commissioner or the commissioner's designee shall not exercise approval power until the expiration of 15 working days from the date the petition and notice of employee rights were posted or served by the employer.

3.13(4) Where any petition is objected to by the labor commissioner or the commissioner's designee or affected employees, the petition, citation, and any objections shall be forwarded to the employment appeal board within 3 working days after the expiration of the 15-day period set out in subrule 3.13(3)*"d."*

This rule is intended to implement Iowa Code section 88.8.

875—3.14 to **3.18** Reserved.

875—3.19(88) Abatement verification.

3.19(1) *Scope and application.* This rule applies to employers who receive a citation for a violation of the Iowa Occupational Safety and Health Act.

3.19(2) *Definitions.*

"Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

"Abatement date" means:

1. For an uncontested citation item, the later of:

- The date in the citation for abatement of the violation;
- The date approved by OSHA or established in litigation as a result of a petition for modification of the abatement date (PMA); or
- The date established in a citation by an informal settlement agreement.

2. For a contested citation item for which the employment appeal board has issued a final order affirming the violation, the later of:

- The date identified in the final order for abatement; or
- The date computed by adding the period allowed in the citation for abatement to the final order date;
- The date established by a formal settlement agreement.

"Affected employees" means those employees who are exposed to the hazard(s) identified as a violation(s) in a citation.

"Final order date" means:

1. For an uncontested citation item, the fifteenth working day after the employer's receipt of the citation;

2. For a contested citation item:

- The thirtieth day after the date on which a final order was entered by the employment appeal board or
- The date on which a court issues a decision affirming the violation in a case in which a final order of employment appeal board has been stayed.

"Movable equipment" means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between work sites.

3.19(3) *Abatement certification.*

a. Within ten calendar days after the abatement date, the employer must certify to the division that each cited violation has been abated, except as provided in paragraph *"b"* of this subrule.

b. The employer is not required to certify abatement if the compliance safety and health officer during the on-site portion of the inspection:

(1) Observes, within 24 hours after a violation is identified, that abatement has occurred; and

(2) Notes in the citation that abatement has occurred.

c. The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required in 3.19(8), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

NOTE: Appendix A contains a sample abatement certification letter.

3.19(4) *Abatement documentation.*

a. The employer must submit to the division, along with the information on abatement certification required by subrule 3.19(3), paragraph *"c,"* documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the division indicates in the citation that the abatement documentation is required.

b. Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

3.19(5) *Abatement plans.*

a. The division may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.

b. The employer must submit an abatement plan for each cited violation within 25 calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

NOTE: Appendix B contains a sample abatement plan form.

3.19(6) *Progress reports.*

a. An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

(1) That periodic progress reports are required and the citation items for which they are required;

(2) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;

(3) Whether additional progress reports are required; and

(4) The date(s) on which additional progress reports must be submitted.

b. For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

NOTE: Appendix B contains a sample progress report form.

3.19(7) *Employee notification.*

a. The employer must inform affected employees and their representative(s) about abatement activities covered by this rule by posting a copy of each document submitted to the division or a summary of the document near the place where the violation occurred.

b. Where posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer shall:

(1) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

(2) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the division.

c. An employee or an employee representative shall submit a request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted. The employer shall comply with an employee's or employee representative's request to examine and copy abatement documents within five working days of receiving the request.

d. The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the division and that abatement documents are:

(1) Not altered, defaced, or covered by other material; and

(2) Remain posted for three working days after submission to the division.

3.19(8) *Transmitting abatement documents.*

a. The employer must include, in each submission required by this rule, the following information:

1. The employer's name and address;
2. The inspection number to which the submission relates;
3. The citation and item numbers to which the submission relates;
4. A statement that the information submitted is accurate; and
5. The signature of the employer or the employer's authorized representative.

b. The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the division receives the document is the date of submission.

3.19(9) *Movable equipment.*

a. For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the work site or between work sites. Attaching a copy of the citation to the equipment is deemed to meet the tagging requirement of this paragraph as well as the posting requirement of rule 875—3.11(88).

b. The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued.

NOTE: Appendix C (nonmandatory) contains a sample tag that employers may use to meet this requirement.

c. If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

(1) For hand-held equipment, immediately after the employer receives the citation; or

(2) For non-hand-held equipment, prior to moving the equipment within or between work sites.

d. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by OSHA to meet the requirements of this rule when the information required by subrule 3.19(9), paragraph *"b,"* is included on the tag.

e. The employer must ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

f. The employer must ensure that the tag or copy of the citation attached to movable equipment remains attached until:

(1) The violation has been abated and all abatement verification documents required by this regulation have been submitted to the division;

(2) The cited equipment has been permanently removed from service or is no longer within the employer's control; or

(3) The appeal board issues a final order vacating the citation.

875—3.20(88) Policy regarding employee rescue activities.

3.20(1) The labor commissioner or the commissioner's designee shall review the inspection report of the compliance safety and health officer. If, on the basis of the report, the labor commissioner or the commissioner's designee believes that the employer has violated a requirement of Iowa Code section 88.4 or any rule, the commissioner or the commissioner's designee shall issue to the employer either a citation or a notice of de minimis violations which has no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

3.20(2) Any citation shall describe with particularity the nature of the alleged violation, including a reference to Iowa Code chapter 88, or rule alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

3.20(3) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under subrule 3.7(1) or a notification of violation under subrule 3.7(3), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

3.20(4) Every citation shall state that the issuance of a citation does not constitute a finding that a violation has occurred unless there is a failure to contest as provided for in Iowa Code chapter 88 or, if contested, unless the citation is affirmed by the appeal board.

3.20(5) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

a. The employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and the employer fails to provide protection of the safety and health of the employee, including failing to provide appropriate training and rescue equipment; or

b. The employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

c. The employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual. Additionally, the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

3.20(6) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

875—3.21 Reserved.

875—3.22(88,89B) Additional hazard communication training requirements.

3.22(1) *Training format.* The employer may present the training program to the employee in any format; however, the employer shall preserve a written summary and synopsis of the training, a cassette tape recording of an oral presentation, or a videotape recording of an audio-video presentation of the training relied upon by the employer for compliance with 29 CFR 1910.1200(h), and shall allow employees and their designated representatives access to the written synopsis, tape recording, or videotape recording.

3.22(2) *Review by the division.* The training program shall be available for review and approval upon inspection by the division. Upon request by the commissioner, the employer shall make available the written synopsis, cassette tape recording, or videotape recording used or prepared by the employer. The commissioner may conduct an inspection to review an actual training program or review the employer's records of a training program.

875—3.23(88) Definitions. The definitions and interpretations contained in Iowa Code section 88.3 shall be applicable to the terms when used in this chapter. As used in this chapter unless the context clearly requires otherwise:

"Act" means the Iowa Occupational Safety and Health Act of 1972, Iowa Code chapter 88.

"Compliance safety and health officer" means a person authorized by the labor commissioner of the department of workforce development, division of labor services, to conduct inspections.

"Division" means the Iowa division of labor of the department of workforce development.

"Inspection" means any inspection of an employer's factory, plant, establishment, construction site or other area, workplace or environment where work is preformed by an employee of an employer, and includes any inspection conducted pursuant to a filed complaint, and any follow-up inspection, accident investigation or other inspections conducted under the Act.

"Working days" means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

This rule is intended to implement Iowa Code section 88.6.

875—3.24(88) Occupational safety and health bureau forms.

3.24(1) IOSH-2 Form: Citation and Notification of Penalty.

3.24(2) IOSH-2B Form: Notification of Failure to Correct.

3.24(3) IOSH-7 Form: Complaint.

3.24(4) IOSH-8 Form: Notice of Alleged Imminent Danger.

3.24(5) IOSH-9 Form: Abatement Notice.

(These forms are being omitted from this publication. For copies of forms contact Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.)

These rules are intended to implement Iowa Code chapters 17A and 88 and sections 84A.1, 84A.2 and 88.2.

NOTE: Appendices A through C provide information and nonmandatory guidelines to assist employers and employees in complying with the appropriate requirements of rule 875—3.19(88).

Appendix A - Sample Abatement—Certification Letter

(Name), IOSH Administrator
Iowa Division of Labor
1000 East Grand Avenue
Des Moines, IA 50319

[Company's Name]
[Company's Address]

The hazard referenced in Inspection Number [insert 9-digit #] for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by: _____

_____

Citation [insert #] and item [insert #] was corrected on [insert date] by: _____

_____

I attest that the information contained in this document is accurate.

_____

Signature

_____

Typed or Printed Name

Appendix B - Sample Abatement Plan or Progress Report

(Name), IOSH Administrator
Iowa Division of Labor
1000 East Grand Avenue
Des Moines, IA 50319

[Company's Name]
[Company's Address]

Check one:
Abatement Plan [ ]
Progress Report [ ]

Inspection Number [insert 9-digit #] _____
Page _____ of _____
Citation Number(s)*_____
Item Number(s)*_____

Action	Proposed Completion Date (for abatement plans only)	Completion Date (for progress reports only)
1.		
2.		
3.		
4.		
5.		
6.		

Date required for final abatement: _____
I attest that the information contained in this document is accurate.

_____
Signature

_____
Typed or Printed Name

Name of primary point of contact for questions: [optional]

Telephone number: _____

* Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

Appendix C Tag

WARNING
EQUIPMENT HAZARD
CITED BY OSHA

EQUIPMENT CITED:

HAZARD CITED:

FOR DETAILED INFORMATION
SEE OSHA CITATION POSTED AT:

Iowa Division of Labor Services
Occupational Safety and Health Administration

Background color - Orange
Message color - Black

[Filed August 29, 1972]
[Filed 12/15/75, Notice 10/6/75—published 12/29/75, effective 2/4/76]
[Filed emergency 11/20/79—published 12/12/79, effective 11/20/79]
[Filed 1/31/80, Notice 12/26/79—published 2/20/80, effective 3/28/80]
[Filed 7/1/83, Notice 5/11/83—published 7/20/83, effective 9/1/83]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed 10/10/91, Notice 6/12/91—published 10/30/91, effective 12/6/91]
[Filed 1/26/99, Notice 12/16/98—published 2/24/99, effective 3/31/99]
[Filed ARC 8522B (Notice ARC 8378B, IAB 12/16/09), IAB 2/10/10, effective 3/17/10]

CHAPTER 4
RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/7/98, see 347—Ch 4]

875—4.1(88) Purpose and scope. These rules provide for record keeping and reporting by employers covered under Iowa Code chapter 88 as necessary or appropriate for enforcement of the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics. This chapter applies to public and private employers, and the use of the word "company" or "companies" in the standard adopted by reference herein shall not limit the scope or application of this chapter to private employers.

875—4.2(88) First reports of injury. All employers shall report to the Iowa division of workers' compensation any occupational injury or illness which temporarily disables an employee for more than three days or which results in permanent total disability, permanent partial disability or death. This report shall be made within four days from such event when such injury or illness is alleged by the employee to have been sustained in the course of the employee's employment. First reports of injury are to be filed in the form and manner required by the division of workers' compensation. A report to the division of workers' compensation is considered to be a report to the division of labor services. The division of workers' compensation shall forward all reports to the division of labor services. This rule does not excuse employers from notifying the division of labor services of fatalities or multiple hospitalization incidents.

875—4.3(88) Record-keeping regulations. Federal Occupational Safety and Health Administration regulations of 29 CFR Sections 1904.0 through 1904.46 as published at 66 Fed. Reg. 6122 to 6135 (January 19, 2001) are adopted, except that reporting of fatalities and multiple hospitalization incidents required by 29 CFR 1904.39 must be made to the IOSH Administrator by visiting 1000 E. Grand Avenue, Des Moines, Iowa, or by calling 1-800-JOB-IOWA. The number for reporting fatalities and multiple hospitalization incidents outside of normal business hours is (877)242-6742. Amendments to this federal standard published at the following locations are also adopted:
66 Fed. Reg. 52031-52034 (October 12, 2001)
67 Fed. Reg. 44047 (July 1, 2002)
67 Fed. Reg. 77170 (December 17, 2002)
68 Fed. Reg. 38606 (June 30, 2003)

875—4.4(88) Supplementary record. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.5(88) Annual summary. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.6(88) Retention of records. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.7(88) Access to records. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.8(88) Reporting of fatality or multiple hospitalization incidents. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.9(88) Falsification or failure to keep records or reports. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.10(88) Change of ownership. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.11 Reserved.

875—4.12(88) Petitions for record-keeping exceptions. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.13(88) Description of statistical program. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.14(88) Duties. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.15(88) Employees not in fixed establishments. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.16(88) Small employers. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.17(88) Bureau of inspections and reporting, research and statistical section forms. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.18(88) Definitions. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.19(88) Establishments classified in Standard Industrial Classification Codes (SIC) 52-89 (except 52-54, 70, 75, 76, 79 and 80). Rescinded IAB 1/23/02, effective 1/1/02.

These rules are intended to implement Iowa Code chapter 88.

[Filed July 13, 1972; amended August 29, 1972, December 1, 1972, April 2, 1973, February 28, 1975]
[Filed 12/15/75, Notice 10/6/75—published 12/29/75, effective 2/4/76]
[Filed 11/18/77, Notice 10/5/77—published 12/14/77, effective 1/20/78]
[Filed 3/15/78, Notice 2/8/78—published 4/5/78, effective 5/15/78]
[Filed 11/2/78, Notice 9/20/78—published 11/15/78, effective 12/22/78]
[Filed emergency 11/8/79—published 11/28/79, effective 1/1/80]
[Filed emergency 11/20/79—published 12/12/79, effective 11/20/79]
[Filed emergency 12/5/79—published 12/26/79, effective 12/5/79]
[Filed emergency 12/5/79—published 12/26/79, effective 1/1/80]
[Filed 10/3/80, Notice 7/9/80—published 10/29/80, effective 12/3/80]
[Filed 7/1/83, Notice 5/11/83—published 7/20/83, effective 9/1/83]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed emergency 10/6/94 after Notice 7/6/94—published 10/26/94, effective 10/26/94]
[Filed 1/21/00, Notice 8/25/99—published 2/9/00, effective 3/15/00]
[Filed emergency 12/19/01 after Notice 11/14/01—published 1/23/02, effective 1/1/02]
[Filed emergency 11/22/02—published 12/11/02, effective 1/1/03]
[Filed 3/28/03, Notice 2/19/03—published 4/16/03, effective 5/21/03]
[Filed emergency 7/16/04 after Notice 6/9/04—published 8/4/04, effective 8/4/04]

CHAPTER 5
RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS, TOLERANCES AND EXEMPTIONS

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/7/98, see 374—Ch 5]

875—5.1(88) Purpose and scope. This chapter contains rules of practice for administrative proceedings to grant variances and other relief under Iowa Code sections 88.5(3), 88.5(6), and 88.5(7). These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

875—5.2(88) Definitions. The definitions and interpretations contained in Iowa Code section 88.3 shall be applicable to the terms when used in this chapter. As used in this chapter unless the context clearly requires otherwise:

"Act" means the Iowa Occupational Safety and Health Act, Iowa Code chapter 88.

"Affected employee" means an employee who would be affected by the grant or denial of a variance, or any one of the employee's authorized representatives, such as the collective bargaining agent.

"Commissioner" means the labor commissioner of the department of workforce development, division of labor services.

"Hearing examiner" means the labor commissioner or the commissioner's designee.

"Party" means a person admitted to participate in a hearing conducted in accordance with rules 5.14(88) to 5.21(88). An applicant for relief and any affected employee shall be entitled to be named parties. For the purpose of special variance hearing procedures under Iowa Code section 88.5(7), the conflicting federal regulatory agency shall also be a party. The department of workforce development, division of labor services, shall be deemed to be a party without the necessity of being named.

"Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority or instrumentality of the state of Iowa.

"Variance" means variances, limitations, variations, tolerances and exemptions for temporary variances (Iowa Code section 88.5(3)), permanent variances (section 88.5(6)), and special variances (section 88.5(7)), unless otherwise specified.

875—5.3 Reserved.

875—5.4(88) Effect of variances. All variances granted pursuant to this chapter shall have only future effect. The commissioner may discretionarily decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved, and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the employment appeal board until the completion of such proceedings.

875—5.5(88) Notice of a granted variance. Notice of every final action granting a variance under this chapter shall be published in one or more newspapers in the state having a statewide circulation. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

875—5.6(88) Form of documents; subscription; copies.

5.6(1) No particular form is prescribed for applications and other papers which may be filed in proceedings under this chapter. However, any application and other papers shall be clearly legible. An original and two copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon copies or printed or processed copies are acceptable copies.

5.6(2) Each application or other paper which is filed in proceedings under this chapter shall be subscribed by the person filing the same or by the person's attorney or other authorized representative.

875—5.7(88) Temporary variance.

5.7(1) *Application for variance.* Any employer or class of employers desiring a variance from a standard, or portion thereof, authorized by Iowa Code section 88.5(3) may file a written application containing the information specified in subrule 5.7(2) with the labor commissioner.

5.7(2) *Contents.* An application filed pursuant to 5.7(1) shall include:

a. The name and address of the applicant;

b. The address of the place or places of employment involved;

c. Any request for a hearing, as provided in this chapter; and

d. The statements and certifications required by Iowa Code section 88.5(3).

5.7(3) *Interim order.*

a. *Application.* An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The labor commissioner may rule ex parte upon the application.

b. *Notice of denial of application.* If an application filed pursuant to 5.7(3)*"a"* is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

c. *Notice of the grant of an interim order.* If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and notice of the terms of the order shall be made in accordance with the notice requirements of rule 5.5(88). It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance (see 5.8(2)*"e"*(2)).

This rule is intended to implement Iowa Code section 88.3.

875—5.8(88) Permanent variance.

5.8(1) *Application for variance.* Any employer or class of employers desiring a variance authorized by Iowa Code section 88.5(6) may file a written application containing the information specified in subrule 5.8(2) with the labor commissioner.

5.8(2) *Contents.* An application filed pursuant to 5.8(1) shall include:

a. The name and address of the applicant;

b. The address of the place or places of employment involved;

c. A description of the conditions, practices, means, methods, operations or processes used or proposed to be used by the applicant;

d. A statement showing how the conditions, practices, means, methods, operations or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

e. A certification that the applicant has informed affected employees of the application by (1) giving a copy thereof to their authorized representative; (2) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and (3) by other appropriate means when necessary;

f. Any request for a hearing, as provided in this chapter; and

g. A description of how employees have been informed of the application and of their right to petition the labor commissioner for a hearing.

5.8(3) *Interim order.* Procedures for applications and for notifications of a denial or grant of interim orders shall be in the same manner as provided for in subrule 5.7(3).

This rule is intended to implement Iowa Code section 88.6.

875—5.9(88) Special variance.

5.9(1) *Application for variance.* Any employer, or class of employers, desiring a special variance authorized by Iowa Code section 88.5(7) may file a written application containing the information specified in 5.9(2) with the labor commissioner.

5.9(2) *Contents.* An application filed pursuant to 5.9(1) shall include:

a. The name and address of the applicant;

b. The address of the place or places of employment involved;

c. The name of the federal agency and a designation of the standard, rule, or regulation allegedly in conflict with a standard, rule or regulation of the division of labor services;

d. A designation of the standard, rule or regulation of the division of labor services allegedly in conflict;

e. A description of the conditions, means, methods, operations, and procedures used and a specific detailed statement as to how and where the conflict exists between federal agency or agencies and the division of labor services;

f. A description of the conditions, practices, means, methods, operations or processes used or proposed to be used by the applicant;

g. A statement showing how the conditions, practices, means, methods, operations or processes used or proposed to be used would take into consideration the safety and health of the employees involved;

h. A certification that the applicant has informed employees affected of the application by (1) giving a copy thereof to their authorized representative; (2) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and (3) by other appropriate means where necessary;

i. Any request for a hearing, as provided in this chapter; and

j. A description of how employees have been informed of the application and of their right to petition the labor commissioner for a hearing.

5.9(3) *Interim order.* Procedures for applications and for notifications of a denial or grant of interim orders shall be in the same manner as provided for in 5.7(3).

This rule is intended to implement Iowa Code section 88.7.

875—5.10(88) Modification and revocation of rules or orders.

5.10(1) An affected employer or an affected employee may apply in writing to the labor commissioner for a modification or revocation of a rule or order issued under Iowa Code section 88.5(3), 88.5(6), or 88.5(7). The application shall contain:

a. The name and address of the applicant;

b. A description of the relief which is sought;

c. A statement setting forth with particularity the grounds for relief;

d. If the applicant is an employer, a certification that the applicant has informed affected employees of the application by: (1) giving a copy thereof to their authorized representative; (2) posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and (3) other appropriate means when necessary;

e. If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

f. Any request for a hearing, as provided in this chapter.

5.10(2) The commissioner may move to modify or revoke a rule or order issued under Iowa Code section 88.5(3), 88.5(6), or 88.5(7). In such event, the commissioner shall cause a notice of intention to be published in accordance with the notice requirements of rule 5.5(88), affording interested persons an opportunity to submit written data, views or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to notify the affected employer and employees. Any request for a hearing shall include a short and plain statement of:

a. How the proposed modification or revocation would affect the requesting party; and

b. What the requesting party would seek to show on the subjects or issues involved.

875—5.11(88) Action on applications.

5.11(1) *Defective applications.* If an application filed pursuant to 5.7(1), 5.8(1), 5.9(1), or 5.10(1) does not conform to the applicable rule, the labor commissioner may deny the application. Prompt notice of the denial of an application shall be given to the applicant and shall include, or be accompanied by, a brief statement of the grounds for the denial. A denial of an application pursuant to this rule shall be without prejudice to the filing of another application.

5.11(2) *Adequate applications.* If an application has not been denied pursuant to 5.11(1), the labor commissioner shall cause notice of the filing of the application to be made in accordance with rule 5.5(88).

A notice of the filing of an application shall include:

a. The terms or an accurate summary, of the application;

b. A reference to the section of the Act under which the application has been filed;

c. An invitation to interested persons to submit within a stated period of time written data, views or arguments regarding the application; and

d. Information to affected employers and employees of any right to request a hearing on the application.

875—5.12(88) Requests for hearings on applications.

5.12(1) *Request for hearing.* Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the labor commissioner a request for a hearing on the application.

5.12(2) *Contents of a request for a hearing.* A request for a hearing filed pursuant to 5.12(1) shall include:

a. A concise statement of facts showing how the employer or employee would be affected by the relief applied for;

b. A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and

c. Any views or arguments on any issue of fact or law presented.

875—5.13(88) Consolidation of proceedings. The commissioner may move or any party may move to consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

875—5.14(88) Notice of hearing.

5.14(1) *Service.* Upon request for a hearing as provided in this chapter, or upon the commissioner's own initiative, the labor commissioner shall serve, or cause to be served, a reasonable notice of hearing.

5.14(2) *Contents.* A notice of hearing served under 5.14(1) shall include:

a. The time, place, and nature of the hearing;

b. The legal authority under which the hearing is to be held; and

c. A specification of issues of fact and law.

875—5.15(88) Manner of service. Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last-known address of the party. The person serving the document shall certify to the manner and the date of the service.

875—5.16(88) Hearing examiner; powers and duties.

5.16(1) *Powers.* The labor commissioner or designee shall preside over the hearing and shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

a. To administer oaths and affirmations;

b. To rule upon offers of proof and receive relevant evidence;

c. To provide for discovery and to determine its scope;

d. To regulate the course of the hearing and the conduct of the parties and their counsel therein;

e. To consider and rule upon procedural requests;

f. To hold conferences for the settlement or simplification of the issues by consent of the parties;

g. To make, or to cause to be made, an inspection of the employment or place of employment involved;

h. To make decisions in accordance with the Act and this chapter; and

i. To take any other appropriate action authorized by the Act or this chapter.

5.16(2) *Private consultation.* Except to the extent required for the disposition of ex parte matters, the hearing examiner may not consult a person or a party on any fact at issue, unless upon notice and opportunity for all parties to participate.

5.16(3) *Disqualification.* When the labor commissioner or designee deems appropriate to be disqualified to preside, or to continue to preside, over a particular hearing, the commissioner or designee shall withdraw therefrom by notice on the record, and the commissioner shall designate another.

Any party who deems the commissioner or designee for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the commissioner a motion for disqualification and removal, which shall be supported by affidavits setting forth the alleged ground for disqualification. The commissioner shall rule upon the motion. The decision shall be deemed final for the purposes of judicial review under rule 5.24(88).

5.16(4) *Contumacious conduct; failure or refusal to appear or obey the rulings of the hearing examiner.* Contumacious conduct at any hearing before the hearing examiner shall be ground for exclusion from the hearing.

If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

5.16(5) *Referral to Iowa rules of civil procedure.* On any procedural question not regulated by the Act or this chapter, the hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Iowa rules of civil procedure.

875—5.17(88) Prehearing conferences.

5.17(1) *Convening conference.* Upon the commissioner's own motion or the motion of a party, the labor commissioner or designee may direct the parties or their counsel to meet with the commissioner for a conference to consider:

a. Simplification of the issues;

b. Necessity or desirability of amendments to documents for purpose of clarification, simplification, or limitation;

c. Stipulations, admissions of fact and of contents and authenticity of documents;

d. Limitation of the number of parties and of expert witnesses; and

e. Such other matters as may tend to expedite the disposition of the proceeding, and to ensure a just conclusion thereof.

5.17(2) *Record of conference.* The labor commissioner or designee shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

875—5.18(88) Consent findings and rules or orders.

5.18(1) *Negotiation by parties.* At any time before the reception of evidence in any hearing, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the hearing examiner, after consideration of the nature of the proceeding, the requirements of the public

interest, the representations of the parties and the probability of an agreement which will result in a just disposition of the issues involved.

5.18(2) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

a. That the rule or order shall have the same force and effect as if made after a full hearing;

b. That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;

c. A waiver of any further procedural steps before the labor commissioner or designee; and

d. A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

5.18(3) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

a. Submit the proposed agreement to the hearing examiner for consideration; or

b. Inform the hearing examiner that agreement cannot be reached.

5.18(4) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the hearing examiner may accept such agreement by issuing a decision based upon the agreed findings.

875—5.19(88) Discovery.

5.19(1) *Perpetuating testimony.* Iowa Rules of Civil Procedure 159-166 are applicable for the taking of depositions for a variance hearing before the hearing examiner.

5.19(2) *Other discovery.* Whenever appropriate to a just disposition of any issue in a hearing, the hearing examiner may allow discovery by other appropriate procedures, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved. Iowa Rules of Civil Procedure 121-134 and 140-158 shall be applicable to such authorized discovery procedures.

875—5.20(88) Hearings.

5.20(1) *Order of proceeding.* Except as may be ordered otherwise by the hearing examiner, the party applicant for relief shall proceed first at a hearing.

5.20(2) *Burden of proof.* The party applicant shall have the burden of proof.

5.20(3) *Evidence.*

a. *Admissibility.* A party shall be entitled to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a hearing examiner shall exclude evidence which is irrelevant, immaterial or unduly repetitious.

b. *Testimony of witnesses.* The testimony of a witness shall be upon an oath or affirmation administered.

c. *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, the party shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the hearing examiner may be relied upon subsequently in a proceeding.

d. *Proof for a special variance.* Before a special variance may be granted, there must be proof that an actual conflict does exist. The proof required to establish such conflict is information in writing or oral testimony from a representative of the involved federal regulatory agency or agencies, substantiated by evidence, that there is a conflict between the standards, rules or regulations of the federal agency and those of the division of labor services. Also, the applicant must prove that compliance with the standard, rule or regulation of the division of labor services would subject the applicant to probable citation, penalty, or prosecution for violating such federal agency standard, rule or regulation.

5.20(4) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the division of labor services by reason of its functions is presumed to be expert provided that the parties shall be

given adequate notice, at the hearing or by reference in the hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

5.20(5) *Transcript.* Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

875—5.21(88) Decisions of hearing examiner.

5.21(1) *Proposed findings of fact, conclusions and rules or orders.* Within ten days after receipt of notice that the transcript of the testimony has been filed or such additional time as the hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and rule or order, together with supporting briefs shall be served on all other parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

5.21(2) *Decision.* Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the hearing examiner shall issue a decision which shall be reviewed and countersigned by the commissioner. The commissioner shall serve the decision upon each party, and the decision shall become final upon the twentieth day after service thereof. The decision shall include: (1) a statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record, and (2) the appropriate rule, order, relief or denial thereof. The decision shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. The decision shall be made on the basis of a preponderance of reliable and probative evidence.

5.21(3) *Grant of a special variance.* The grant of a special variance shall be renewable upon review by the labor commissioner at six-month intervals beginning on the date the decision becomes final under 5.21(2). If at the time of the review the labor commissioner finds that there has been a change in the standard, rule, or regulation or a change in the interpretation of such standard, rule or regulation of the federal agency or the division of labor services affecting or resolving the conflict on which the special variance was granted, the labor commissioner shall set the case for an evidentiary hearing in accordance with 5.14(88) to 5.21(88). Enforcement shall be stayed during review and hearing procedures under this rule.

Affected employees shall be notified by their employer of a renewal or a refusal to renew by: (1) giving a copy of the labor commissioner's notice to the authorized employee representative; (2) posting a copy of the commissioner's notice at the place or places where notices to employees are normally posted; and (3) other appropriate means.

875—5.22(88) Motion for summary decision.

5.22(1) Any party may, at least 20 days before the date fixed for any hearing, move with or without supporting affidavits for a summary decision in favor of the moving party on all or any part of the proceeding. Any other party may, within 10 days after service of the motion, serve opposing affidavits or countermove for summary decision. The hearing examiner may discretionarily set the matter for argument and call for the submission of briefs.

5.22(2) The filing of any documents under 5.22(1) shall be with the labor commissioner, and copies of any such documents shall be served in accordance with 5.15(88).

5.22(3) The hearing examiner may grant the motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

5.22(4) Affidavits shall set forth such facts as would be admissible in evidence in the hearing and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this rule, a party opposing the motion may not rest upon the mere allegations or denials of its own pleading. The response of the party opposing the motion must set forth specific facts showing that there is a genuine issue of fact for the hearing.

5.22(5) Should it appear from the affidavits of a party opposing the motion that the opposing party cannot for reasons stated present by affidavit facts essential to justify the opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

875—5.23(88) Summary decision.

5.23(1) *No genuine issue of material fact.*

a. Where no genuine issue of a material fact is found to have been raised, the hearing examiner may issue a decision to become final 20 days after service thereof.

b. A decision made under 5.23(1) shall include a statement of: (1) findings and conclusions, and the reasons or bases therefor, on all issues presented; and (2) the terms and conditions of the rule or order made.

c. A copy of the decision under this rule shall be served on each party.

5.23(2) *Hearings on issues of fact.* Where a genuine material question of fact is raised, the hearing examiner shall, and in any other case may, set the case for an evidentiary hearing in accordance with rules 5.14(88) to 5.21(88).

875—5.24(88) Finality for purposes of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

These rules are intended to implement Iowa Code sections 84A.1, 84A.2, 88.2, 88.3, 88.5, 88.6, and 88.7.

[Filed 10/11/72]
[Filed emergency 2/15/80—published 3/5/80, effective 2/15/80]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]

[Similar subject covered in Ch 8 published IAC 12/24/80]

CHAPTER 6
Rescinded, effective 1/28/81

[Similar subject covered in Ch 8 published IAC 12/24/80]

CHAPTER 7
Reserved

CHAPTER 8
CONSULTATIVE SERVICES

[Similar subject covered in Ch 6 prior to 12/24/80]
[Ch 8 appearing prior to 12/24/80 renumbered as Ch 9]
[Prior to 9/24/86, Labor, Bureau of[530]]
[Prior to 10/7/98, see 347—Ch 8]

875—8.1(88) Purpose and scope. This chapter contains procedures for the division of labor services, bureau of consultation and education, to provide consultation services to private and public employers. Employers seeking information regarding consultative services should visit http://www.iowaworkforce.org/labor/iosh/consultation/index.htm or telephone (515)281-7629.

8.1(1) Services are available at no cost to employers to assist employers in establishing effective occupational safety and health programs in order to provide employment and a place of employment that are safe and healthful. The goal is to prevent injuries and illnesses that may result from exposure to hazardous work practices and conditions. The principal assistance will be provided at the employer's work site, but off-site assistance may also be provided. Within the scope of the employer's request, the consultant will evaluate the employer's program for providing employment and a place of employment that are safe and healthful; identify specific hazards in the workplace; and provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified. Assistance may include education and training of the employer, the employer's supervisors, and the employer's other employees to make the employer self-sufficient in ensuring safe and healthful work and working conditions.

8.1(2) Consultation is independent of Iowa OSHA Enforcement, and the discovery of hazards shall not mandate citations or penalties. However, the employer has a statutory obligation to protect employees, and, in certain instances, the employer shall be required to take necessary protective action. An employer that corrects the hazards identified by the consultant during a comprehensive workplace survey, implements certain core elements of an effective safety and health program, and commits to complete other core elements of an effective safety and health program may qualify for exemption from certain enforcement activities.

[**ARC 8591B**, IAB 3/10/10, effective 4/14/10]

875—8.2(88) Definitions. Unless the context clearly requires otherwise, the definitions contained in Iowa Code section 88.3 shall be applicable wherever this chapter uses those terms. Unless the context clearly requires otherwise, the following additional definitions apply to this chapter.

"Act" means the Iowa occupational safety and health Act, Iowa Code chapter 88.

"Compliance officer" means a compliance safety and health officer employed by Iowa OSHA Enforcement.

"Consultant" means an employee of the bureau of consultation and education of the division of labor services.

"Consultation" means all activities related to the provision of consultative assistance under this chapter, including off-site consultation and on-site consultation.

"Division" means the division of labor services of the department of workforce development.

"Education" means planned and organized activity by a consultant to impart information to employers and employees to enable them to establish and maintain employment and a place of employment that are safe and healthful.

"Employee representative" means the authorized representative of employees at a site where there is a recognized labor organization representing employees.

"Hazard correction" means the elimination or control of a workplace hazard in accordance with the requirements of the Act and rules.

"Imminent danger" means a condition or practice in a place of employment that could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated through the procedures set forth in rule 875—8.6(88).

"Iowa OSHA Enforcement" means the unit of the division that enforces the occupational safety and health Act.

"List of Hazards" means a list of all serious hazards that are identified by the consultant and the correction due dates agreed upon by the employer and the consultant.

"Off-site consultation" means consultation provided away from an employer's work site by means such as training, education, telephone, and correspondence.

"On-site consultation" means consultation provided during a visit to an employer's work site. "On-site consultation" includes a written report to the employer on the findings and recommendations resulting from the visit, and may include training and education needed to address hazards or potential hazards at the work site.

"Other-than-serious hazard" means any condition or practice that would be classified as an other-than-serious violation of applicable standards based on criteria contained in the current Iowa Field Operations Manual.

"Programmed inspection" means an inspection scheduled based on objective or neutral criteria as set forth in the Iowa Field Operations Manual.

"Recognition and exemption program" means an achievement recognition program to recognize an employer that operates an exemplary program that results in the immediate and long-term prevention of job-related injuries and illnesses at a workplace.

"Serious hazard" means a condition or practice that would be classified as a serious violation of applicable standards based on criteria contained in the current Iowa Field Operations Manual, except that the element of employer knowledge shall not be considered.

"Training" means the planned and organized activity of a consultant to impart skills, techniques and methodologies to employers and their employees to assist them in establishing and maintaining employment and a place of employment that are safe and healthful.

[**ARC 8591B**, IAB 3/10/10, effective 4/14/10]

875—8.3(88) Requesting and scheduling of on-site consultation visit.

8.3(1) *Employer requests.* On-site consultation shall be provided only upon the request of the employer and shall not result from the enforcement of any right of entry under law. An employer in a small, high-hazard establishment is encouraged to include within the scope of the request all working conditions at the work site and the employer's entire safety and health program. Any employer may specify a more limited scope for the visit by indicating working conditions, hazards, or situations on which on-site consultation will be focused. When limited requests are made, the consultant shall limit review and provide assistance only with respect to the specified working conditions, hazards, or situations. However, if in the course of the on-site visit the consultant observes hazards that are outside the scope of the request, the consultant shall treat the hazards as though they were within the scope of the request.

8.3(2) *Relationship to enforcement.* An employer may request on-site consultation to assist in the abatement of hazards cited during an enforcement inspection. However, on-site consultation may not take place after an enforcement inspection until the conditions set forth in 8.7(2)*"c"* have been met.

8.3(3) *Scheduling priority.* Scheduling priorities shall be in accordance with the federal Consultation Policy and Procedures Manual.

[**ARC 8591B**, IAB 3/10/10, effective 4/14/10]

875—8.4 and **8.5** Reserved.

875—8.6(88) Conducting a visit.

8.6(1) *Preparation.*

a. The consultant shall conduct an on-site consultation visit only after appropriate preparation. Prior to the visit, the consultant shall become familiar with as many factors concerning the establishment's operation as possible. The consultant shall review all applicable codes and standards. In addition, the consultant shall ensure that all necessary technical and personal protective equipment is available and functioning properly.

b. If a request is made during a promotional visit and the conditions of 8.6(1)*"a"* are met, a consultant may perform on-site consultation activities immediately.

8.6(2) *Structured format.*

a. An initial on-site consultation visit shall consist of an opening conference where the employer shall be advised of the responsibilities under state law, an examination of those aspects of the employer's safety and health program that relate to the scope of the visit, a walk-through of the workplace, and a closing conference. An initial visit may include training and education for employers and employees, if the employer requests the assistance and if the need for the training and education is revealed by the walk-through of the workplace and the examination of the employer's safety and health program. The consultant shall provide a written report to the employer after the consultation.

b. Additional visits may be conducted as the employer requests to provide needed education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards. Additional visits may also be conducted if necessary to verify the correction of serious hazards identified during previous visits.

8.6(3) *Employee participation.*

a. The consultant retains the right to confer with individual employees privately during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the employer's request, and to evaluate the employer's safety and health program. The consultant shall explain the necessity for this contact to the employer during the opening conference, and the employer must agree to this contact before a visit can proceed.

b. Employees, their representatives, and members of a workplace joint safety and health committee may participate in the on-site consultation to the extent desired by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

c. An employee representative of affected employees must be afforded an opportunity to accompany the consultant and the employer's representative during the physical inspection of the workplace. The consultant may permit additional employees such as representatives of a joint safety and health committee to participate in the walk-through of the work site if the consultant determines that additional employees will aid the visit.

d. If there is no employee representative, if the consultant is unable with reasonable certainty to identify an employee representative, or if the employee representative declines the offer to participate, the consultant must confer with a reasonable number of employees concerning matters of occupational safety and health.

e. The consultant is authorized to deny the right to participate to any person whose conduct interferes with the orderly conduct of the visit.

8.6(4) *Opening and closing conferences.*

a. In the opening conference, the consultant shall explain the relationship between on-site consultation and OSHA enforcement activity, shall explain the obligation to protect employees in the event that certain hazardous conditions are identified, and shall emphasize the employer's obligation to post the List of Hazards.

b. The consultant will encourage a joint opening conference with the employer and employee representatives. If there is an objection to a joint conference, the consultant will conduct separate conferences with the employer and employee representatives. The consultant must inform employees at the opening conference of the purpose of the consultation visit.

c. At the conclusion of the consultation visit, the consultant will conduct a closing conference with the employer and employee representatives, jointly or separately. The consultant will describe hazards identified during the visit and other pertinent issues related to employee safety and health.

8.6(5) *On-site activity.*

a. During the on-site consultation, the consultant will focus primarily on conditions, hazards, or situations for which the employer requested assistance. An employer may expand or reduce the scope of the request at any time during the on-site consultation. If the employer requests an expansion of the scope, the consultant shall expand the scope immediately if scheduling priorities permit and the consultant is

prepared. If the employer's request for expansion necessitates further preparation by the consultant or the expertise of another consultant, or if other employer requests may merit higher priority, the consultant shall refer the request to the consultation manager for scheduling. If the scope of the visit is reduced, the employer shall correct serious hazards that were already identified and provide appropriate proof of correction.

b. The consultant shall advise the employer of the employer's obligations and responsibilities under applicable law.

c. Within the scope of the employer's request, the consultant shall review the employer's safety and health program and provide advice on modifications or additions to make the program more effective.

d. Consultants shall identify and provide advice on the correction of hazards included in the employer's request and any other safety or health hazards observed in the workplace during the course of the on-site consultation. This advice may include a general description of a solution. The consultant shall conduct necessary sampling, testing, and analysis to confirm the existence of a safety or health hazard.

e. Advice and technical assistance on the correction of identified safety and health hazards may be provided to employers during and after the on-site consultation. The consultant may provide materials on approaches, means, techniques, and items commonly utilized for the elimination or control of hazards. The consultant shall advise the employer of additional sources of assistance, if known.

f. When a hazard is identified in the workplace, the consultant shall indicate to the employer the consultant's best judgment as to whether the hazard would be classified as serious hazard or other-than-serious hazard.

g. If the consultant determines that an identified serious hazard exists, the consultant shall assist the employer to develop a specific plan to correct the hazard, affording the employer a reasonable period of time to complete the necessary action. The chief of the bureau of consultation and education shall provide an expeditious informal discussion regarding the period of time established for the correction of a hazard or any other substantive findings of the consultant if the employer requests the informal discussion within 15 working days from receipt of the consultant's report.

h. As a condition for receiving the consultation service, the employer must agree to post the List of Hazards accompanying the consultant's written report and to notify affected employees when hazards are corrected. The employer must, upon receipt, post the unedited List of Hazards in a prominent place where it is readily observable by all affected employees for 3 working days or until the hazards are corrected, whichever is later. A copy of the List of Hazards shall be made available to the employee representative who participated in the visit. In addition, the employer must agree to make available at the work site for review by affected employees or the employee representative information on the corrective actions proposed by the consultant and other-than-serious hazards identified. Iowa OSHA Enforcement will not schedule a compliance inspection in response to a complaint based upon a posted List of Hazards unless the employer fails to correct the hazards or fails to provide interim protection for exposed employees.

8.6(6) *Employer's obligations.*

a. An employer must take immediate action to eliminate employee exposure to a hazard that, in the judgment of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the chief of the bureau of consultation and education shall immediately notify the affected employees and the chief of Iowa OSHA Enforcement and provide relevant information.

b. An employer must also take the necessary action to eliminate or control employee exposure to any identified serious hazard and meet the employee notice requirements of 8.6(5)*"h."* In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a follow-up visit, or take similar action.

c. The chief of the bureau of consultation and education may grant an extension of time for the correction of a serious hazard when:

(1) The employer files a request for extension;

(2) The employer demonstrates it made a good-faith effort to correct the hazard within the established time frame;

(3) The employer provides evidence that correction is not complete because of factors beyond the employer's reasonable control; and

(4) The employer provides evidence that the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.

d. If the employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions thereof, the chief of the bureau of consultation and education shall immediately notify and provide relevant information to the chief of Iowa OSHA Enforcement. The chief of Iowa OSHA Enforcement shall review the facts and determine whether enforcement activity is warranted.

e. The employer shall confirm in writing to the chief of the bureau of consultation and education that the hazards have been corrected, unless the consultant observed correction of the hazards.

8.6(7) *Written report.* For each visit that results in substantive findings or recommendations, a written report shall be prepared and sent to the employer. The report shall include the following elements as applicable:

a. A restatement of the employer's request;

b. A description of the working conditions examined by the consultant;

c. An evaluation of the employer's safety and health program;

d. Recommendations for making the safety and health program more effective;

e. Identification, description, and classification of each hazard;

f. Reference to applicable standards and regulations;

g. Correction date for each serious hazard;

h. Suggested means or approaches to correct hazards; and

i. Recommendations for additional assistance such as medical or engineering advice.

8.6(8) *Confidentiality.* Pursuant to Iowa Code subsection 88.16(4), consultation records that relate to specific employers or specific workplaces shall be kept confidential. The bureau of consultation and education shall provide, when requested, program information to the U.S. Occupational Safety and Health Administration, including information that identifies employers that have requested consultation services. The U.S. Occupational Safety and Health Administration may use such information to administer the consultation program and to evaluate performance, but shall treat information that identifies specific employers as exempt from public disclosure to the extent allowed by law.

[**ARC 8591B**, IAB 3/10/10, effective 4/14/10]

875—8.7(88) Relationship to enforcement.

8.7(1) *Separation of functions.* Consultation shall be conducted independently of Iowa OSHA Enforcement and shall have separate management staff. Except as noted in subrule 8.7(3), neither the identity of an employer requesting on-site consultation nor the file or report from the consultation activity shall be provided to Iowa OSHA Enforcement unless the employer fails to take the necessary action to protect employees from a serious hazard or imminent danger.

8.7(2) *Effect upon scheduling.*

a. An on-site consultation already in progress shall have priority over compliance inspections by Iowa OSHA Enforcement except as provided in 8.7(2)*"b."* The consultant and the employer shall notify the compliance officer that an on-site consultation is in progress and shall request delay of the inspection until after the on-site consultation is completed. An on-site consultation shall be considered in progress in relation to the working conditions, hazards, or situations covered by the request from the beginning of the opening conference through the end of the correction due dates and any extensions thereof. In exercising its authority to schedule compliance inspection, Iowa OSHA Enforcement may assign a lower priority to work sites where consultation visits are scheduled.

b. The consultant shall terminate an on-site consultation if one of the following compliance inspections by Iowa OSHA Enforcement is about to take place:

(1) Imminent danger investigation.

(2) Fatality/catastrophe investigation.

(3) Complaint investigation.

(4) Other critical inspection as determined by the commissioner.

c. An on-site consultation shall not take place while an enforcement inspection is in progress at the establishment. An enforcement inspection shall be deemed "in progress" from the time a compliance officer initially seeks entry to the workplace to the end of the closing conference. If the employer denied the compliance officer entry to the work site, an enforcement inspection is "in progress" until the inspection is concluded, the commissioner determines that a warrant to enter will not be sought, or the commissioner determines that allowing a consultative visit to proceed is in the best interest of employee safety and health. An on-site consultation shall not take place subsequent to an enforcement inspection until the employer has been notified that no citations will be issued, or if a citation is issued, on-site consultation shall take place only with regard to those citation items that have become final orders.

d. The recognition and exemption program operated by the bureau of consultation and education provides incentives and support to high-hazard employers to work with employees to develop, implement, and continuously improve the effectiveness of safety and health programs.

(1) Programmed enforcement inspections at a work site may be deferred while the employer is working to achieve recognition status if the following conditions are met:

1. An employer requested participation in a recognition and exemption program;

2. A consultant has conducted an on-site consultation covering all conditions and operations related to occupational safety and health;

3. An employer corrected all hazards identified during the consultation visit within established time frames;

4. An employer has begun to implement all of the elements of an effective safety and health program; and

5. An employer agrees to request an on-site consultation if major changes in working conditions or work processes occur that may introduce new hazards.

(2) Employers that meet all the requirements for recognition and exemption will be removed from the Iowa OSHA Enforcement programmed inspection schedules for at least one year from the date of the certificate of recognition.

(3) Iowa OSHA Enforcement will continue to make the inspections listed below at sites that achieved recognition and exemption status and at sites that have received deferrals under 8.7(2)*"d"*(1):

1. Imminent danger;

2. Fatality/catastrophe; and

3. Formal complaint.

8.7(3) *Effect upon enforcement.*

a. The advice of the consultant and the consultant's written report shall not be binding upon a compliance officer in a subsequent enforcement inspection. In a subsequent enforcement inspection, a compliance officer is not precluded from issuing citations and proposing penalties for hazardous conditions or violations.

b. The hazard identification and correction assistance given by the consultant, the failure of the consultant to point out a specific hazard, and errors or omissions by the consultant shall not:

(1) Be binding upon a compliance officer;

(2) Affect the regular conduct of a compliance inspection;

(3) Preclude the finding of alleged violations and the issuance of citations; or

(4) Act as a defense to any enforcement action.

c. In the event of a subsequent enforcement inspection, the employer is not required to inform the compliance officer of the prior consultation visit. The employer is not required to provide a copy of the consultant's written report to the compliance officer, except to the extent that disclosure of information contained in the report is required by 29 CFR 1910.1020. During a subsequent enforcement action, if Iowa OSHA Enforcement independently determines there is reason to believe that the employer failed to correct serious hazards identified during the consultation visit, created the same hazards again, or made false statements to the bureau of consultation and education in connection with the consultation program, Iowa OSHA Enforcement may exercise its authority to obtain the consultation report.

d. If the employer chooses to provide a copy of the consultant's report to the compliance officer, the report may be used to determine the extent to which an inspection is required and as a factor in determining proposed penalties. Iowa OSHA Enforcement may impose minimal penalties if a consultant previously identified a hazard and the employer is complying with the consultant's recommendations in good faith.

These rules are intended to implement Iowa Code chapter 88.

[**ARC 8591B**, IAB 3/10/10, effective 4/14/10]

[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87][1]
[Filed ARC 8591B (Notice ARC 8472B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]

[1] Rules renumbered and rescinded, see IAB 5/6/87.

CHAPTER 9
DISCRIMINATION AGAINST EMPLOYEES

[Previously Ch 8 IAC renumbered 12/24/80]
[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/7/98, see 347—Ch 9]

875—9.1(88) Introductory statement.

9.1(1) The Occupational Safety and Health Act, Iowa Code chapter 88, hereinafter referred to as the Act, is designed to regulate employment conditions relating to occupational safety and health and to achieve safer and healthier workplaces throughout the state. By the terms of the Act, every person engaged in a business, the state of Iowa and its various departments and agencies and any political subdivision of the state, who have employees is required to furnish each of its employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and, further, to comply with occupational safety and health standards promulgated under the Act.

9.1(2) Employees and representatives of employees are afforded a wide range of substantive and procedural rights under the Act. Moreover, effective implementation of the Act and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives, at every level of safety and health activity.

9.1(3) This chapter deals essentially with the rights of employees afforded under Iowa Code section 88.9(3). Iowa Code section 88.9(3) prohibits reprisals, in any form, against employees who exercise rights under the Act.

875—9.2(88) Purpose of this chapter. The purpose of this chapter is to make available in one place interpretations of the various provisions of Iowa Code section 88.9(3), which will guide the commissioner of labor in the performance of duties.

875—9.3(88) General requirements of Iowa Code section 88.9(3). Section 88.9(3) provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:

1. Filed any complaint under or related to the Act;
2. Instituted or caused to be instituted any proceeding under or related to the Act;
3. Testified or is about to testify in any proceeding under the Act or related to the Act; or
4. Exercised on the employee's own behalf or on behalf of others any right afforded by the Act.

Any employee who believes that the employee has been discriminated against in violation of section 88.9(3) may, within 30 days after such violation occurs, lodge a complaint with the commissioner of labor alleging the violation. The commissioner shall then cause an appropriate investigation to be made. If, as a result of the investigation, the commissioner determines that the provisions of section 88.9(3) have been violated, civil action may be instituted in any appropriate district court, to restrain violations of section 88.9(3) and to obtain other appropriate relief, including rehiring or reinstatement of the employee to the former position with backpay. Section 88.9(3) further provides for notification of complainants by the commissioner of determinations made pursuant to their complaints.

875—9.4(88) Persons prohibited from discriminating. Iowa Code section 88.9(3) provides that a person shall not discharge or in any manner discriminate against an employee because the employee has exercised rights under the Act. Section 88.3(9) defines "person" as "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons." Consequently, the prohibitions of section 88.9(3) are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 88.9(3) would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee.

875—9.5(88) [1] **Persons protected by Iowa Code section 88.9(3).**

9.5(1) All employees are afforded the full protection of section 88.9(3). For purposes of the Act, an employee is defined as "an employee of an employer who is employed in a business of his employer."

9.5(2) Reserved.

This rule is intended to implement Iowa Code section 88.9(3).

[1] Objection was filed 6/5/79 to rule as appeared 5/16/79, see IAB 6/27/79 for text of objection as well as amended language intended to overcome objection.

875—9.6(88) Unprotected activities distinguished.

9.6(1) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Iowa Code section 88.9(3) apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render the employee immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations.

9.6(2) At the same time, to establish a violation of section 88.9(3), the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, section 88.9(3) has been violated. Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

875—9.7 and **9.8** Reserved.

875—9.9(88) Complaints under or related to the Act.

9.9(1) Discharge of, or discrimination against, an employee because the employee has filed "any complaint . . . under or related to this Act . . . " is prohibited by Iowa Code section 88.9(3). An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Iowa Code section 88.6(5). However, this would not be the only type of complaint protected by Iowa Code section 88.9(3). The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application.

9.9(2) Complaints registered with other governmental agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. These types of complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

9.9(3) Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

875—9.10(88) Proceedings under or related to the Act.

9.10(1) Discharge of, or discrimination against, any employee because the employee has "instituted or caused to be instituted any proceeding under or related to this Act" is also prohibited by Iowa Code section 88.9(3). Examples of proceedings which could arise specifically under the Act would be inspections of workplaces under Iowa Code section 88.6, an employee contest of an abatement date under Iowa Code section 88.8(3), an employee application for modification or revocation of a variance under Iowa Code section 88.5 and an employee appeal of an order of the employment appeal board under Iowa Code section 88.9(1). In determining whether a "proceeding" is "related to" the Act, the considerations discussed in rule 875—8.9(88) would also be applicable.

9.10(2) An employee need not directly institute the proceedings. It is sufficient if the employee sets into motion activities of others which result in proceedings under or related to the Act.

875—9.11(88) Testimony. Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Iowa Code section 88.9(3). This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rule making or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, the employee would be protected against discrimination resulting from such testimony.

875—9.12(88) Exercise of any right afforded by the Act.

9.12(1) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, Iowa Code section 88.9(3) also protects employees from discrimination occurring because of the exercise "of any right afforded by this chapter." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings. Certain other rights exist by necessary implication. For example, employees may request information from the bureau of occupational safety and health of the division of labor services of the department of workforce development; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the commissioner in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

9.12(2) On the other hand, review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to its attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Iowa Code section 88.6(5), or to seek assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Iowa Code section 88.9(3) by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

9.12(3) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or being subjected to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to be exposed to the dangerous condition, the employee would be protected against subsequent discrimination if the following conditions are met:

a. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury.

b. The employee, where possible, first sought to:

(1) Eliminate the danger through resorting to regular statutory enforcement channels, unless there has been insufficient time due to the urgency of the situation, or

(2) Obtain from the employer a correction of the dangerous condition but was unable to do so.

875—9.13 and **9.14** Reserved.

875—9.15(88) Filing of complaint for discrimination.

9.15(1) A complaint of Iowa Code section 88.9(3) discrimination may be filed by the employee, or by a representative authorized to do so on the employee's behalf. No particular form of complaint is required. A complaint should be filed with the commissioner of labor.

9.15(2) Iowa Code section 88.9(3) provides that an employee who believes discriminatory actions have occurred in violation of section 88.9(3) "may, within 30 days after such violation occurs," file a complaint with the commissioner. The major purpose of the 30-day period in this provision is to allow the commissioner to decline to entertain complaints which have become stale. Accordingly, complaints not

filed within 30 days of an alleged violation will ordinarily be presumed to be untimely. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency, among others, are circumstances which do not justify tolling of the 30-day period. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

875—9.16(88) Notice of determination. Iowa Code subsection 88.9(3) provides that within 90 days of the filing of a complaint, the commissioner is to notify a complainant whether prohibited discrimination occurred. This 90-day provision is considered to be directory in nature. While every effort will be made to notify complainants of the commissioner's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in Iowa Code subsection 88.9(3).

875—9.17(88) Withdrawal of complaint. Enforcement of the provisions of Iowa Code section 88.9(3) is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the commissioner's investigation. The commissioner's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw the complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

875—9.18(88) Arbitration or other agency proceedings.

9.18(1) An employee who files a complaint under Iowa Code section 88.9(3) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board or the Iowa department of personnel. The commissioner's jurisdiction to entertain section 88.9(3) complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of the other agencies or bodies. The commissioner may file action in district court regardless of the pendency of other proceedings. However, the commissioner also recognizes the policy favoring voluntary resolution of disputes under proceedings in collective bargaining agreements. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 88.9(3) complaints. Where a complainant is in fact pursuing remedies other than those provided by section 88.9(3), postponement of the commissioner's determination and deferral to the results of such proceedings may be in order.

9.18(2) Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under section 88.9(3) and those proceedings are not likely to violate the rights guaranteed by section 88.9(3). The factual issues in such proceedings must be substantially the same as those raised by a section 88.9(3) complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination.

9.18(3) A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, the dismissal will not ordinarily be regarded as determinative of the section 88.9(3) complaint.

875—9.19 and **9.20** Reserved.

875—9.21(88) Walkaround pay disputes. An employer's failure to pay employees for time during which they are engaged in walkaround inspections, or in other inspection-related activities, such as

responding to questions of compliance officers, or participating in the opening and closing conferences, is discriminatory under section Iowa Code section 88.9(3) so long as neither the number of employees participating nor the time required to express employee concerns is excessive. An authorized employee representative shall be given the opportunity to accompany on the physical inspection pursuant to Iowa Code section 88.6(4) and 875—3.6(88).

This rule is intended to implement Iowa Code section 88.9(3).

875—9.22(88) Employee refusal to comply with safety rules. Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as discriminatory action prohibited by Iowa Code section 88.9(3). This situation should be distinguished from refusals to work, as discussed in rule 875—8.12(88).

These rules are intended to implement Iowa Code sections 84A.1, 84A.2, 88.2, and 88.9(3).

[Filed 4/27/79, Notice 11/29/78—published 5/16/79, effective 6/25/79]
[Filed emergency 5/11/79—published 5/30/79, effective 6/25/79]
[Filed emergency 6/8/79—published 6/27/79, effective 6/25/79]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed 1/21/00, Notice 8/25/99—published 2/9/00, effective 3/15/00]
[Filed 5/16/07, Notice 4/11/07—published 6/6/07, effective 8/13/07]

CHAPTER 10
GENERAL INDUSTRY SAFETY AND HEALTH RULES

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/7/98, see 347—Ch 10]

875—10.1(88) Definitions. As used in these rules, unless the context clearly requires otherwise:

"Part" means 875—Chapter 10, Iowa Administrative Code.

"Standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

875—10.2(88) Applicability of standards.

10.2(1) None of the standards in this chapter shall apply to working conditions of employees with respect to which federal agencies other than the United States Department of Labor, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

10.2(2) If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same condition, practice, means, method, operation, or process.

10.2(3) However, any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for the industry, as in 1910.12, 1910.261, 1910.262, 1910.263, 1910.264, 1910.265, 1910.266, 1910.267, and 1910.268 of 29 CFR 1910, to the extent that none of such particular standards applies.

10.2(4) In the event a standard protects on its face a class of persons larger than employees, the standard shall be applicable under this part only to employees and their employment and places of employment.

10.2(5) An employer who is in compliance with any standard in this part shall be deemed to be in compliance with the requirement of Iowa Code section 88.4, but only to the extent of the condition, practice, means, method, operation or process covered by the standard.

875—10.3(88) Incorporation by reference. The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this chapter have the same force and effect as other standards in this chapter. Only mandatory provisions (i.e., provisions containing the word "shall" or other mandatory language) of standards incorporated by reference are adopted under the Act.

875—10.4(88) Exception for hexavalent chromium exposure in metal and surface finishing job shops. Prior to December 31, 2008, for employers that comply with the requirements of this rule, the labor commissioner shall enforce respiratory protection provisions only with respect to employees who fall into one of the six categories outlined in Paragraph 4, Appendix A, 29 CFR 1910.1026, except that the phrase "Exhibit B to this Agreement" shall refer to Exhibit B, Appendix A, 29 CFR 1910.1026. This exception is limited to the narrow circumstances outlined below and shall expire on May 31, 2010.

10.4(1) *Eligibility.* An employer's facility is eligible for this exception if the employer is a member of the Surface Finishing Industry Council or the facility is a surface-finishing or metal-finishing job shop that sells plating or anodizing services to other companies.

10.4(2) *Participation.* To be covered by this exception, eligible employers must complete and submit a Declaration of Participation via mail to the Labor Commissioner, 1000 East Grand Avenue, Des Moines, Iowa 50319, or via facsimile to (515)281-7995. Declarations of Participation must be postmarked or received on or before April 7, 2007. Each declaration shall apply only to one facility. Declaration of Participation forms are available at http://www.iowaworkforce.org/labor/iosh/index.html or by calling (515)242-5870.

10.4(3) *Applicability.* This exception applies only to surface- and metal-finishing operations within covered facilities.

10.4(4) *Feasible engineering controls.* Participating employers must implement feasible engineering controls necessary to reduce hexavalent chromium levels at their facilities to or below five micrograms per cubic meter of air calculated as an eight-hour, time-weighted average by December 31, 2008. In fulfilling this obligation, participating employers may select from the engineering and work practice controls listed in Exhibit A, Appendix A, 29 CFR 1910.1026, or may adopt other controls.

10.4(5) *Employee training.* Participating employers shall train their employees in accordance with the provisions of 29 CFR 1910.1026(l)(2). Using language the employees can understand, participating employers will also train their employees on the provisions of this exception no later than June 7, 2007.

10.4(6) *Compliance and monitoring.* Participating employers shall comply with the requirements set forth in Paragraphs 3 and 4, Appendix A, 29 CFR 1910.1026, except that as used in Appendix A:

a. The acronym "OSHA" shall refer to the labor commissioner;

b. The word "Company" shall refer to employers participating in this exception;

c. The word "Agreement" shall refer to this rule; and

d. The phrase "Exhibit B to this Agreement" shall refer to Exhibit B, Appendix A, 29 CFR 1910.1026.

875—10.5 and **10.6** Reserved.

875—10.7(88) Definitions and requirements for a nationally recognized testing laboratory. The federal regulations adopted at 29 CFR, Chapter XVII, Part 1910, regulation 1910.7 and Appendix A, as published at 53 Fed. Reg. 12120 (April 12, 1988) and amended at 53 Fed. Reg. 16838 (May 11, 1988), 54 Fed. Reg. 24333 (June 7, 1989) and 65 Fed. Reg. 46818 (July 31, 2000) are adopted by reference.

875—10.8 to **10.11** Reserved.

875—10.12(88) Construction work.

10.12(1) *Standards.* The standards prescribed in 875—Chapter 26 are adopted as occupational safety and health standards and shall apply, according to the provisions thereof, to every employment and place of employment of every employee engaged in construction work. Each employer shall protect the employment and places of employment of each employee engaged in construction work by complying with the provisions of 875—Chapter 26.

10.12(2) *Definition.* For the purpose of this rule, *"construction work"* means work for construction, alteration, or repair including painting and redecorating, and where applicable, the erection of new electrical transmission and distribution lines and equipment, and the alteration, conversion, and improvement of the existing transmission and distribution lines and equipment. This incorporation by reference of 875—Chapter 26 (Part 1926) is not intended to include references to interpretative rules having relevance to the application of the construction safety Act, but having no relevance to the application of Iowa Code chapter 88.

875—10.13 to **10.18** Reserved.

875—10.19(88) Special provisions for air contaminants.

10.19(1) *Asbestos, tremolite, anthophyllite, and actinolite dust.* Reserved.

10.19(2) *Vinyl chloride.* Rule 1910.1017 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to vinyl chloride in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to vinyl chloride which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(3) *Acrylonitrile.* Rule 1910.1045 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to acrylonitrile in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to acrylonitrile which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(4) *Inorganic arsenic.* Rule 1910.1018 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to inorganic arsenic in every employment

and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to inorganic arsenic which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(5) Rescinded, effective 6/10/87.

10.19(6) *Lead.* Rescinded IAB 8/5/92, effective 8/5/92.

10.19(7) *Ethylene oxide.* Rule 1910.1047 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to ethylene oxide in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to ethylene oxide which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(8) *Benzene.* Rule 1910.1028 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to benzene in every place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to benzene which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(9) *Formaldehyde.* Rule 1910.1048 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to formaldehyde in every place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to formaldehyde which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

10.19(10) *Methylene chloride.* Rule 1910.1052 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to methylene chloride in every employment and place of employment covered by 875—10.12(88) in lieu of any different standard on exposure to methylene chloride which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

875—10.20(88) Adoption by reference. The rules beginning at 1910.20 and continuing through 1910, as adopted by the United States Secretary of Labor shall be the rules for implementing Iowa Code chapter 88. This rule adopts the Federal Occupational Safety and Health Standards of 29 CFR, Chapter XVII, Part 1910 as published at 37 Fed. Reg. 22102 to 22324 (October 18, 1972) and as amended at:

37 Fed. Reg. 23719 (November 8, 1972)
37 Fed. Reg. 24749 (November 21, 1972)
38 Fed. Reg. 3599 (February 8, 1973)
38 Fed. Reg. 9079 (April 10, 1973)
38 Fed. Reg. 10932 (May 3, 1973)
38 Fed. Reg. 14373 (June 1, 1973)
38 Fed. Reg. 16223 (June 21, 1973)
38 Fed. Reg. 19030 (July 17, 1973)
38 Fed. Reg. 27048 (September 28, 1973)
38 Fed. Reg. 28035 (October 11, 1973)
38 Fed. Reg. 33397 (December 4, 1973)
39 Fed. Reg. 1437 (January 9, 1974)
39 Fed. Reg. 3760 (January 29, 1974)
39 Fed. Reg. 6110 (February 19, 1974)
39 Fed. Reg. 9958 (March 15, 1974)
39 Fed. Reg. 19468 (June 3, 1974)
39 Fed. Reg. 35896 (October 4, 1974)
39 Fed. Reg. 41846 (December 3, 1974)
39 Fed. Reg. 41848 (December 3, 1974)
40 Fed. Reg. 3982 (January 27, 1975)
40 Fed. Reg. 13439 (March 26, 1975)
40 Fed. Reg. 18446 (April 28, 1975)
40 Fed. Reg. 23072 (May 28, 1975)
40 Fed. Reg. 23743 (June 2, 1975)
40 Fed. Reg. 24522 (June 9, 1975)

40 Fed. Reg. 27369 (June 27, 1975)
40 Fed. Reg. 31598 (July 28, 1975)
41 Fed. Reg. 11504 (March 19, 1976)
41 Fed. Reg. 13352 (March 30, 1976)
41 Fed. Reg. 35184 (August 20, 1976)
41 Fed. Reg. 46784 (October 22, 1976)
41 Fed. Reg. 55703 (December 21, 1976)
42 Fed. Reg. 2956 (January 14, 1977)
42 Fed. Reg. 3304 (January 18, 1977)
42 Fed. Reg. 45544 (September 9, 1977)
42 Fed. Reg. 46540 (September 16, 1977)
42 Fed. Reg. 37668 (July 22, 1977)
43 Fed. Reg. 11527 (March 17, 1978)
43 Fed. Reg. 19624 (May 5, 1978)
43 Fed. Reg. 27394 (June 23, 1978)
43 Fed. Reg. 27434 (June 23, 1978)
43 Fed. Reg. 28472 (June 30, 1978)
43 Fed. Reg. 28473 (June 30, 1978)
43 Fed. Reg. 31330 (July 21, 1978)
43 Fed. Reg. 35032 (August 8, 1978)
43 Fed. Reg. 45809 (October 3, 1978)
43 Fed. Reg. 49744 (October 24, 1978)
43 Fed. Reg. 51759 (November 7, 1978)
43 Fed. Reg. 53007 (November 14, 1978)
43 Fed. Reg. 56893 (December 5, 1978)
43 Fed. Reg. 57602 (December 8, 1978)
44 Fed. Reg. 5447 (January 26, 1979)
44 Fed. Reg. 50338 (August 28, 1979)
44 Fed. Reg. 60981 (October 23, 1979)
44 Fed. Reg. 68827 (November 30, 1979)
45 Fed. Reg. 6713 (January 29, 1980)
45 Fed. Reg. 8594 (February 8, 1980)
45 Fed. Reg. 12417 (February 26, 1980)
45 Fed. Reg. 35277 (May 23, 1980)
45 Fed. Reg. 41634 (June 20, 1980)
45 Fed. Reg. 54333 (August 15, 1980)
45 Fed. Reg. 60703 (September 12, 1980)
46 Fed. Reg. 4056 (January 16, 1981)
46 Fed. Reg. 6288 (January 21, 1981)
46 Fed. Reg. 24557 (May 1, 1981)
46 Fed. Reg. 32022 (June 19, 1981)
46 Fed. Reg. 40185 (August 7, 1981)
46 Fed. Reg. 2632 (August 21, 1981)
46 Fed. Reg. 42632 (August 21, 1981)
46 Fed. Reg. 45333 (September 11, 1981)
46 Fed. Reg. 60775 (December 11, 1981)
47 Fed. Reg. 39161 (September 7, 1982)
47 Fed. Reg. 51117 (November 12, 1982)
47 Fed. Reg. 53365 (November 26, 1982)
48 Fed. Reg. 2768 (January 21, 1983)
48 Fed. Reg. 9641 (March 8, 1983)
48 Fed. Reg. 9776 (March 8, 1983)

48 Fed. Reg. 29687 (June 28, 1983)
49 Fed. Reg. 881 (January 6, 1984)
49 Fed. Reg. 4350 (February 3, 1984)
49 Fed. Reg. 5321 (February 10, 1984)
49 Fed. Reg. 25796 (June 22, 1984)
50 Fed. Reg. 1050 (January 9, 1985)
50 Fed. Reg. 4648 (February 1, 1985)
50 Fed. Reg. 9800 (March 12, 1985)
50 Fed. Reg. 36992 (September 11, 1985)
50 Fed. Reg. 37353 (September 13, 1985)
50 Fed. Reg. 41494 (October 11, 1985)
50 Fed. Reg. 51173 (December 13, 1985)
51 Fed. Reg. 22733 (June 20, 1986)
51 Fed. Reg. 24325 (July 3, 1986)
51 Fed. Reg. 25053 (July 10, 1986)
51 Fed. Reg. 33033 (September 18, 1986)
51 Fed. Reg. 33260 (September 19, 1986)
51 Fed. Reg. 34560 (September 29, 1986)
51 Fed. Reg. 45663 (December 19, 1986)
52 Fed. Reg. 16241 (May 4, 1987)
52 Fed. Reg. 17753 (May 12, 1987)
52 Fed. Reg. 34562 (September 11, 1987)
52 Fed. Reg. 36026 (September 25, 1987)
52 Fed. Reg. 36387 (September 28, 1987)
52 Fed. Reg. 46291 (December 4, 1987)
52 Fed. Reg. 49624 (December 31, 1987)
53 Fed. Reg. 6629 (March 2, 1988)
53 Fed. Reg. 8352 (March 14, 1988)
53 Fed. Reg. 11436 (April 6, 1988)
53 Fed. Reg. 12120 (April 12, 1988)
53 Fed. Reg. 16838 (May 11, 1988)
53 Fed. Reg. 17695 (May 18, 1988)
53 Fed. Reg. 27346 (July 20, 1988)
53 Fed. Reg. 27960 (July 26, 1988)
53 Fed. Reg. 34736 (September 8, 1988)
53 Fed. Reg. 35625 (September 14, 1988)
53 Fed. Reg. 37080 (September 23, 1988)
53 Fed. Reg. 38162 (September 29, 1988)
53 Fed. Reg. 39581 (October 7, 1988)
53 Fed. Reg. 45080 (November 8, 1988)
53 Fed. Reg. 47188 (November 22, 1988)
53 Fed. Reg. 49981 (December 13, 1988)
54 Fed. Reg. 2920 (January 19, 1989)
54 Fed. Reg. 6888 (February 15, 1989)
54 Fed. Reg. 9317 (March 6, 1989)
54 Fed. Reg. 12792 (March 28, 1989)
54 Fed. Reg. 28054 (July 5, 1989)
54 Fed. Reg. 29274 (July 11, 1989)
54 Fed. Reg. 29545 (July 13, 1989)
54 Fed. Reg. 30704 (July 21, 1989)
54 Fed. Reg. 31456 (July 28, 1989)
54 Fed. Reg. 31765 (August 1, 1989)

54 Fed. Reg. 36687 (September 1, 1989)
54 Fed. Reg. 36767 (September 5, 1989)
54 Fed. Reg. 37531 (September 11, 1989)
54 Fed. Reg. 41364 (October 6, 1989)
54 Fed. Reg. 46610 (November 6, 1989)
54 Fed. Reg. 47513 (November 15, 1989)
54 Fed. Reg. 49971 (December 4, 1989)
54 Fed. Reg. 50372 (December 6, 1989)
54 Fed. Reg. 52024 (December 20, 1989)
55 Fed. Reg. 3146 (January 30, 1990)
55 Fed. Reg. 3300 (January 31, 1990)
55 Fed. Reg. 3723 (February 5, 1990)
55 Fed. Reg. 4998 (February 13, 1990)
55 Fed. Reg. 7967 (March 6, 1990)
55 Fed. Reg. 12110 (March 30, 1990)
55 Fed. Reg. 12819 (April 6, 1990)
55 Fed. Reg. 13696 (April 11, 1990)
55 Fed. Reg. 14073 (April 13, 1990)
55 Fed. Reg. 19259 (May 9, 1990)
55 Fed. Reg. 25094 (June 10, 1990)
55 Fed. Reg. 26431 (June 28, 1990)
55 Fed. Reg. 32014 (August 6, 1990)
55 Fed. Reg. 38677 (September 20, 1990)
55 Fed. Reg. 46053 (November 1, 1990)
55 Fed. Reg. 46949 (November 8, 1990)
55 Fed. Reg. 50686 (December 10, 1990)
56 Fed. Reg. 15832 (April 18, 1991)
56 Fed. Reg. 24686 (May 31, 1991)
56 Fed. Reg. 43700 (September 4, 1991)
56 Fed. Reg. 64175 (December 6, 1991)
57 Fed. Reg. 6403 (February 24, 1992)
57 Fed. Reg. 7847 (March 4, 1992)
57 Fed. Reg. 7878 (March 5, 1992)
57 Fed. Reg. 22307 (May 27, 1992)
57 Fed. Reg. 24330 (June 8, 1992)
57 Fed. Reg. 24701 (June 10, 1992)
57 Fed. Reg. 27160 (June 18, 1992)
57 Fed. Reg. 29204 (July 1, 1992)
57 Fed. Reg. 29206 (July 1, 1992)
57 Fed. Reg. 35666 (August 10, 1992)
57 Fed. Reg. 42388 (September 14, 1992)
58 Fed. Reg. 4549 (January 14, 1993)
58 Fed. Reg. 15089 (March 19, 1993)
58 Fed. Reg. 16496 (March 29, 1993)
58 Fed. Reg. 21778 (April 23, 1993)
58 Fed. Reg. 34845 (June 29, 1993)
58 Fed. Reg. 35308 (June 30, 1993)
58 Fed. Reg. 35340 (June 30, 1993)
58 Fed. Reg. 40191 (July 27, 1993)
59 Fed. Reg. 4435 (January 31, 1994)
59 Fed. Reg. 6169 (February 9, 1994)
59 Fed. Reg. 16360 (April 6, 1994)

59 Fed. Reg. 26115 (May 19, 1994)
59 Fed. Reg. 33661 (June 30, 1994)
59 Fed. Reg. 33910 (July 1, 1994)
59 Fed. Reg. 36699 (July 19, 1994)
59 Fed. Reg. 40729 (August 9, 1994)
59 Fed. Reg. 41057 (August 10, 1994)
59 Fed. Reg. 43270 (August 22, 1994)
59 Fed. Reg. 51741 (October 12, 1994)
59 Fed. Reg. 65948 (December 22, 1994)
60 Fed. Reg. 9624 (February 21, 1995)
60 Fed. Reg. 11194 (March 1, 1995)
60 Fed. Reg. 33344 (June 28, 1995)
60 Fed. Reg. 33984 (June 29, 1995)
60 Fed. Reg. 47035 (September 8, 1995)
60 Fed. Reg. 52859 (October 11, 1995)
61 Fed. Reg. 5508 (February 13, 1996)
61 Fed. Reg. 9230 (March 7, 1996)
61 Fed. Reg. 9583 (March 8, 1996)
61 Fed. Reg. 19548 (May 2, 1996)
61 Fed. Reg. 21228 (May 9, 1996)
61 Fed. Reg. 31430 (June 20, 1996)
61 Fed. Reg. 43456 (August 23, 1996)
61 Fed. Reg. 56831 (November 4, 1996)
62 Fed. Reg. 1600 (January 10, 1997)
62 Fed. Reg. 29668 (June 2, 1997)
62 Fed. Reg. 40195 (July 25, 1997)
62 Fed. Reg. 42018 (August 4, 1997)
62 Fed. Reg. 42666 (August 8, 1997)
62 Fed. Reg. 43581 (August 14, 1997)
62 Fed. Reg. 48175 (September 15, 1997)
62 Fed. Reg. 54383 (October 20, 1997)
62 Fed. Reg. 65203 (December 11, 1997)
62 Fed. Reg. 66276 (December 18, 1997)
63 Fed. Reg. 1269 (January 8, 1998)
63 Fed. Reg. 13339 (March 19, 1998)
63 Fed. Reg. 17093 (April 8, 1998)
63 Fed. Reg. 20098 (April 23, 1998)
63 Fed. Reg. 33467 (June 18, 1998)
63 Fed. Reg. 50729 (September 22, 1998)
63 Fed. Reg. 66038 (December 1, 1998)
63 Fed. Reg. 66270 (December 1, 1998)
64 Fed. Reg. 13700 (March 22, 1999)
64 Fed. Reg. 13908 (March 23, 1999)
64 Fed. Reg. 22552 (April 27, 1999)
65 Fed. Reg. 76567 (December 7, 2000)
66 Fed. Reg. 5324 (January 18, 2001)
66 Fed. Reg. 18191 (April 6, 2001)
67 Fed. Reg. 67961 (November 7, 2002)
68 Fed. Reg. 75780 (December 31, 2003)
69 Fed. Reg. 7363 (February 17, 2004)
69 Fed. Reg. 31881 (June 8, 2004)
69 Fed. Reg. 46993 (August 4, 2004)

70 Fed. Reg. 53929 (September 13, 2005)
70 Fed. Reg. 1140 (January 5, 2005)
71 Fed. Reg. 10373 (February 28, 2006)
71 Fed. Reg. 36008 (June 23, 2006)
71 Fed. Reg. 63242 (October 30, 2006)
72 Fed. Reg. 7190 (February 14, 2007)
72 Fed. Reg. 64428 (November 15, 2007)
72 Fed. Reg. 71068 (December 14, 2007)
73 Fed. Reg. 75583 (December 12, 2008)
68 Fed. Reg. 32638 (June 2, 2003)
74 Fed. Reg. 46355 (September 9, 2009)
74 Fed. Reg. 40447 (August 11, 2009)
75 Fed. Reg. 12685 (March 17, 2010)
76 Fed. Reg. 33606 (June 8, 2011)
76 Fed. Reg. 75786 (December 5, 2011)
77 Fed. Reg. 17764 (March 26, 2012)
76 Fed. Reg. 80738 (December 27, 2011)
77 Fed. Reg. 37598 (June 22, 2012)
77 Fed. Reg. 46949 (August 7, 2012)
78 Fed. Reg. 9313 (February 8, 2013)
78 Fed. Reg. 69549 (November 20, 2013)

[**ARC 7699B**, IAB 4/8/09, effective 5/13/09; **ARC 8088B**, IAB 9/9/09, effective 10/14/09; **ARC 8395B**, IAB 12/16/09, effective 1/20/10; **ARC 8522B**, IAB 2/10/10, effective 3/17/10; **ARC 8997B**, IAB 8/11/10, effective 9/15/10; **ARC 9755B**, IAB 9/21/11, effective 10/26/11; **ARC 0173C**, IAB 6/13/12, effective 7/18/12; **ARC 0282C**, IAB 8/22/12, effective 9/26/12; **ARC 0726C**, IAB 5/1/13, effective 6/5/13; **ARC 0898C**, IAB 8/7/13, effective 9/11/13; **ARC 1509C**, IAB 6/25/14, effective 7/30/14]

These rules are intended to implement Iowa Code section 88.5.

[Filed 7/13/72; amended 8/29/72, 12/1/72, 8/16/73, 10/11/73, 3/18/74, 6/12/74, 12/3/74, 3/13/75]
[Filed 2/20/76, Notice 12/29/75—published 3/8/76, effective 4/15/76]
[Filed 6/21/76, Notice 5/17/76—published 7/12/76, effective 8/20/76]
[Filed 4/13/77, Notice 3/9/77—published 5/4/77, effective 6/9/77]
[Filed emergency 10/13/77—published 11/2/77, effective 10/13/77]
[Filed 11/3/78, Notice 9/20/78—published 11/29/78, effective 1/10/79]
[Filed emergency 2/2/79—published 2/21/79, effective 2/2/79]
[Filed 8/1/80, Notice 6/25/80—published 8/20/80, effective 9/25/80]
[Filed emergency 6/15/81—published 7/8/81, effective 6/15/81]
[Filed 8/12/81, Notice 7/8/81—published 9/2/81, effective 10/9/81]
[Filed 4/22/83, Notice 3/16/83—published 5/11/83, effective 6/15/83]
[Filed 5/20/83, Notice 4/13/83—published 6/8/83, effective 7/15/83]
[Filed emergency after Notice 7/1/83, Notice 3/16/83—published 7/20/83, effective 7/1/83]
[Filed 7/12/84, Notice 3/14/84—published 8/1/84, effective 9/5/84]
[Filed emergency 5/8/85—published 6/5/85, effective 5/8/85]
[Filed 9/5/85, Notice 5/8/85—published 9/25/85, effective 10/30/85]
[Filed 12/30/85, Notice 10/23/85—published 1/15/86, effective 2/19/86]
[Filed 3/21/86, Notice 12/18/85—published 4/9/86, effective 5/25/86]
[Filed emergency 6/27/86—published 7/16/86, effective 7/21/86]
[Filed 6/27/86, Notice 3/26/86—published 7/16/86, effective 8/20/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 10/1/86—published 10/22/86, effective 10/1/86]
[Filed 10/1/86, Notice 7/16/86—published 10/22/86, effective 11/26/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed emergency 5/1/87—published 5/20/87, effective 5/1/87]
[Filed emergency 5/14/87—published 6/3/87, effective 5/14/87]

[Filed 5/12/87, Notice 10/22/86—published 6/3/87, effective 7/8/87]
[Filed emergency 6/15/87—published 7/1/87, effective 6/15/87]
[Filed 8/6/87, Notice 5/6/87—published 8/26/87, effective 9/30/87]
[Filed 8/6/87, Notice 5/20/87—published 8/26/87, effective 9/30/87]
[Filed 8/6/87, Notice 6/3/87—published 8/26/87, effective 9/30/87]
[Filed 8/6/87, Notice 7/1/87—published 8/26/87, effective 9/30/87]
[Filed 4/25/88, Notice 12/16/87—published 5/18/88, effective 6/22/88]
[Filed 7/8/88, Notice 5/18/88—published 7/27/88, effective 9/1/88]
[Filed 8/30/88, Notice 6/15/88—published 9/21/88, effective 11/1/88]
[Filed 3/17/89, Notices 9/21/88, 10/5/88, 10/19/88—published 4/5/89, effective 5/10/89]
[Filed 5/25/89, Notice 4/5/89—published 6/14/89, effective 7/20/89]
[Filed 8/18/89, Notice 6/14/89—published 9/6/89, effective 10/11/89]
[Filed 10/26/89, Notice 9/6/89—published 11/15/89, effective 12/20/89]
[Filed 1/19/90, Notice 11/15/89—published 2/7/90, effective 3/14/90]
[Filed 3/16/90, Notice 2/7/90—published 4/4/90, effective 5/9/90]
[Filed 6/8/90, Notice 4/4/90—published 6/27/90, effective 8/1/90]
[Filed 11/9/90, Notice 6/27/90—published 11/28/90, effective 1/2/91]
[Filed 2/15/91, Notice 11/28/90—published 3/6/91, effective 4/10/91]
[Filed 4/23/91, Notice 3/6/91—published 5/15/91, effective 6/19/91]
[Filed 6/28/91, Notice 5/15/91—published 7/24/91, effective 8/28/91]
[Filed 9/27/91, Notice 7/24/91—published 10/16/91, effective 11/20/91]
[Filed 12/20/91, Notice 10/30/91—published 1/8/92, effective 2/12/92]
[Filed emergency 2/12/92 after Notice 1/8/92—published 3/4/92, effective 3/4/92]
[Filed emergency 5/6/92 after Notice 4/1/92—published 5/27/92, effective 5/27/92]
[Filed emergency 7/17/92—published 8/5/92, effective 8/5/92]
[Filed emergency 7/29/92 after Notice 6/24/92—published 8/19/92, effective 8/19/92]
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[Filed emergency 1/4/95 after Notice 11/9/94—published 2/1/95, effective 2/1/95]
[Filed emergency 4/21/95 after Notice 3/15/95—published 5/10/95, effective 5/10/95]
[Filed emergency 7/14/95 after Notice 5/10/95—published 8/2/95, effective 8/2/95]
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[Filed emergency 12/1/95 after Notice 10/11/95—published 12/20/95, effective 12/20/95]
[Filed emergency 1/26/96 after Notice 12/20/95—published 2/14/96, effective 2/14/96]
[Filed emergency 7/12/96 after Notice 5/22/96—published 7/31/96, effective 7/31/96]
[Filed emergency 10/3/96 after Notice 7/31/96—published 10/23/96, effective 10/23/96]
[Filed emergency 11/27/96 after Notice 10/23/96—published 12/18/96, effective 12/18/96]
[Filed emergency 2/7/97 after Notice 12/18/96—published 2/26/97, effective 2/26/97]

[Filed emergency 4/4/97 after Notice 2/26/97—published 4/23/97, effective 4/23/97]
[Filed emergency 12/11/97 after Notice 10/22/97—published 12/31/97, effective 12/31/97]
[Filed emergency 3/19/98 after Notice 2/11/98—published 4/8/98, effective 4/8/98]
[Filed emergency 9/4/98 after Notice 7/29/98—published 9/23/98, effective 9/23/98]
[Filed emergency 10/30/98 after Notice 9/23/98—published 11/18/98, effective 11/18/98]
[Filed emergency 1/8/99 after Notice 11/18/98—published 1/27/99, effective 1/27/99]
[Filed emergency 3/5/99 after Notice 1/27/99—published 3/24/99, effective 3/24/99]
[Filed emergency 1/5/00 after Notice 8/25/99—published 1/26/00, effective 1/26/00]
[Filed 7/20/01, Notice 6/13/01—published 8/8/01, effective 9/12/01]
[Filed 11/20/01, Notice 6/13/01—published 12/12/01, effective 1/16/02]
[Filed 3/14/03, Notice 2/5/03—published 4/2/03, effective 5/7/03]
[Filed emergency 7/16/04 after Notice 6/9/04—published 8/4/04, effective 8/4/04]
[Filed 10/28/04, Notice 7/21/04—published 11/24/04, effective 12/29/04]
[Filed 2/10/06, Notice 12/21/05—published 3/1/06, effective 4/5/06]
[Filed 3/29/06, Notice 1/18/06—published 3/29/06, effective 5/3/06]
[Filed 6/14/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed emergency 7/28/06—published 8/16/06, effective 8/28/06]
[Filed 1/10/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]
[Filed 5/16/07, Notice 4/11/07—published 6/6/07, effective 8/13/07]
[Filed 2/8/08, Notice 1/2/08—published 2/27/08, effective 5/15/08]
[Filed 6/24/08, Notice 5/7/08—published 7/16/08, effective 8/20/08]
[Filed ARC 7699B (Notice ARC 7541B, IAB 2/11/09), IAB 4/8/09, effective 5/13/09]
[Filed ARC 8088B (Notice ARC 7927B, IAB 7/1/09), IAB 9/9/09, effective 10/14/09]
[Filed ARC 8395B (Notice ARC 8241B, IAB 10/21/09), IAB 12/16/09, effective 1/20/10]
[Filed ARC 8522B (Notice ARC 8378B, IAB 12/16/09), IAB 2/10/10, effective 3/17/10]
[Filed ARC 8997B (Notice ARC 8862B, IAB 6/16/10), IAB 8/11/10, effective 9/15/10]
[Filed ARC 9755B (Notice ARC 9640B, IAB 7/27/11), IAB 9/21/11, effective 10/26/11]
[Filed ARC 0173C (Notice ARC 0105C, IAB 4/18/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 0282C (Notice ARC 0175C, IAB 6/27/12), IAB 8/22/12, effective 9/26/12]
[Filed ARC 0726C (Notice ARC 0587C, IAB 2/6/13), IAB 5/1/13, effective 6/5/13]
[Filed ARC 0898C (Notice ARC 0752C, IAB 5/29/13), IAB 8/7/13, effective 9/11/13]
[Filed ARC 1509C (Notice ARC 1440C, IAB 4/30/14), IAB 6/25/14, effective 7/30/14]

CHAPTERS 11 to 25
Reserved

CHAPTER 26
CONSTRUCTION SAFETY AND HEALTH RULES

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/7/98, see 347—Ch 26]

875—26.1(88) Adoption by reference. Federal Safety and Health Regulations for Construction beginning at 29 CFR 1926.16 and continuing through 29 CFR, Chapter XVII, Part 1926, are hereby adopted by reference for implementation of Iowa Code chapter 88. These federal rules shall apply and be interpreted to apply to the Iowa Occupational Safety and Health Act, Iowa Code chapter 88, not the Contract Work Hours and Safety Standards Act, and shall apply and be interpreted to apply to enforcement by the Iowa commissioner of labor, not the United States Secretary of Labor or the Federal Occupational Safety and Health Administration. The amendments to 29 CFR 1926 are adopted as published at:

38 Fed. Reg. 16856 (June 27, 1973)
38 Fed. Reg. 27594 (October 5, 1973)
38 Fed. Reg. 33397 (December 4, 1973)
39 Fed. Reg. 19470 (June 3, 1974)
39 Fed. Reg. 24361 (July 2, 1974)
40 Fed. Reg. 23072 (May 28, 1975)
41 Fed. Reg. 55703 (December 21, 1976)
42 Fed. Reg. 2956 (January 14, 1977)
42 Fed. Reg. 37668 (July 22, 1977)
43 Fed. Reg. 56894 (December 5, 1978)
45 Fed. Reg. 75626 (November 14, 1980)
51 Fed. Reg. 22733 (June 20, 1986)
51 Fed. Reg. 25318 (July 11, 1986)
52 Fed. Reg. 17753 (May 12, 1987)
52 Fed. Reg. 36381 (September 28, 1987)
52 Fed. Reg. 46291 (December 4, 1987)
53 Fed. Reg. 22643 (June 16, 1988)
53 Fed. Reg. 27346 (July 20, 1988)
53 Fed. Reg. 29139 (August 2, 1988)
53 Fed. Reg. 35627 (September 14, 1988)
53 Fed. Reg. 35953 (September 15, 1988)
53 Fed. Reg. 36009 (September 16, 1988)
53 Fed. Reg. 37080 (September 23, 1988)
54 Fed. Reg. 15405 (April 18, 1989)
54 Fed. Reg. 23850 (June 2, 1989)
54 Fed. Reg. 30705 (July 21, 1989)
54 Fed. Reg. 41088 (October 5, 1989)
54 Fed. Reg. 45894 (October 31, 1989)
54 Fed. Reg. 49279 (November 30, 1989)
54 Fed. Reg. 52024 (December 20, 1989)
54 Fed. Reg. 53055 (December 27, 1989)
55 Fed. Reg. 3732 (February 5, 1990)
55 Fed. Reg. 42328 (October 18, 1990)
55 Fed. Reg. 47687 (November 14, 1990)
55 Fed. Reg. 50687 (December 10, 1990)
56 Fed. Reg. 2585 (January 23, 1991)
56 Fed. Reg. 5061 (February 7, 1991)
56 Fed. Reg. 41794 (August 23, 1991)
56 Fed. Reg. 43700 (September 4, 1991)

57 Fed. Reg. 7878 (March 5, 1992)
57 Fed. Reg. 24330 (June 8, 1992)
57 Fed. Reg. 29119 (June 30, 1992)
57 Fed. Reg. 35681 (August 10, 1992)
57 Fed. Reg. 42452 (September 14, 1992)
58 Fed. Reg. 21778 (April 23, 1993)
58 Fed. Reg. 26627 (May 4, 1993)
58 Fed. Reg. 35077 (June 30, 1993)
58 Fed. Reg. 35310 (June 30, 1993)
58 Fed. Reg. 40468 (July 28, 1993)
59 Fed. Reg. 215 (January 3, 1994)
59 Fed. Reg. 6170 (February 9, 1994)
59 Fed. Reg. 36699 (July 19, 1994)
59 Fed. Reg. 40729 (August 9, 1994)
59 Fed. Reg. 41131 (August 10, 1994)
59 Fed. Reg. 43275 (August 22, 1994)
59 Fed. Reg. 65948 (December 22, 1994)
60 Fed. Reg. 9625 (February 21, 1995)
60 Fed. Reg. 11194 (March 1, 1995)
60 Fed. Reg. 33345 (June 28, 1995)
60 Fed. Reg. 34001 (June 29, 1995)
60 Fed. Reg. 36044 (July 13, 1995)
60 Fed. Reg. 39255 (August 2, 1995)
60 Fed. Reg. 50412 (September 29, 1995)
61 Fed. Reg. 5509 (February 13, 1996)
61 Fed. Reg. 9248 (March 7, 1996)
61 Fed. Reg. 31431 (June 20, 1996)
61 Fed. Reg. 41738 (August 12, 1996)
61 Fed. Reg. 43458 (August 23, 1996)
61 Fed. Reg. 46104 (August 30, 1996)
61 Fed. Reg. 56856 (November 4, 1996)
61 Fed. Reg. 59831 (November 25, 1996)
62 Fed. Reg. 1619 (January 10, 1997)
63 Fed. Reg. 1295 (January 8, 1998)
63 Fed. Reg. 1919 (January 13, 1998)
63 Fed. Reg. 3814 (January 27, 1998)
63 Fed. Reg. 13340 (March 19, 1998)
63 Fed. Reg. 17094 (April 8, 1998)
63 Fed. Reg. 20099 (April 23, 1998)
63 Fed. Reg. 33468 (June 18, 1998)
63 Fed. Reg. 35138 (June 29, 1998)
63 Fed. Reg. 66274 (December 1, 1998)
64 Fed. Reg. 22552 (April 27, 1999)
66 Fed. Reg. 5265 (January 18, 2001)
66 Fed. Reg. 37137 (July 17, 2001)
67 Fed. Reg. 57736 (September 12, 2002)
69 Fed. Reg. 31881 (June 8, 2004)
70 Fed. Reg. 1143 (January 5, 2005)
71 Fed. Reg. 2885 (January 18, 2006)
70 Fed. Reg. 76985 (December 29, 2005)
71 Fed. Reg. 10381 (February 28, 2006)
71 Fed. Reg. 36008 (June 23, 2006)

71 Fed. Reg. 76985 (August 24, 2006)
72 Fed. Reg. 64428 (November 15, 2007)
73 Fed. Reg. 75583 (December 12, 2008)
75 Fed. Reg. 12685 (March 17, 2010)
75 Fed. Reg. 27429 (May 17, 2010)
75 Fed. Reg. 48130 (August 9, 2010)
76 Fed. Reg. 33606 (June 8, 2011)
77 Fed. Reg. 17764 (March 26, 2012)
76 Fed. Reg. 80738 (December 27, 2011)
77 Fed. Reg. 23118 (April 18, 2012)
77 Fed. Reg. 37598 (June 22, 2012)
77 Fed. Reg. 42988 (July 23, 2012)
77 Fed. Reg. 46949 (August 7, 2012)
78 Fed. Reg. 23841 (April 23, 2013)
78 Fed. Reg. 32116 (May 29, 2013)

This rule is intended to implement Iowa Code sections 84A.1, 84A.2, 88.2 and 88.5.

[**ARC 7699B**, IAB 4/8/09, effective 5/13/09; **ARC 8997B**, IAB 8/11/10, effective 9/15/10; **ARC 9230B**, IAB 11/17/10, effective 12/22/10; **ARC 9755B**, IAB 9/21/11, effective 10/26/11; **ARC 0173C**, IAB 6/13/12, effective 7/18/12; **ARC 0282C**, IAB 8/22/12, effective 9/26/12; **ARC 0726C**, IAB 5/1/13, effective 6/5/13; **ARC 0898C**, IAB 8/7/13, effective 9/11/13; **ARC 1049C**, IAB 10/2/13, effective 11/6/13]

[Filed 7/13/72; amended 8/29/72, 8/16/73, 10/11/73, 3/18/74, 12/3/74]
[Filed 2/20/76, Notice 12/29/75—published 3/8/76, effective 4/15/76]
[Filed 4/13/77, Notice 3/9/77—published 5/4/77, effective 6/9/77]
[Filed 11/3/78, Notice 9/20/78—published 11/29/78, effective 1/10/79]
[Filed 8/1/80, Notice 6/25/80—published 8/20/80, effective 9/25/80]
[Filed 8/12/81, Notice 7/8/81—published 9/2/81, effective 10/9/81]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 10/1/86—published 10/22/86, effective 10/1/86]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed 4/17/87, Notice 10/22/86—published 5/6/87, effective 6/10/87]
[Filed emergency 6/15/87—published 7/1/87, effective 6/15/87]
[Filed 8/6/87, Notice 7/1/87—published 8/26/87, effective 9/30/87]
[Filed 7/8/88, Notice 5/18/88—published 7/27/88, effective 9/1/88]
[Filed 3/17/89, Notices 9/21/88, 10/19/88—published 4/5/89, effective 5/10/89]
[Filed 8/18/89, Notices 6/14/89, 6/28/89—published 9/6/89, effective 10/11/89]
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[Filed emergency 12/1/95 after Notice 10/11/95—published 12/20/95, effective 12/20/95]
[Filed emergency 1/26/96 after Notice 12/20/95—published 2/14/96, effective 2/14/96]
[Filed emergency 7/12/96 after Notice 5/22/96—published 7/31/96, effective 7/31/96]
[Filed emergency 10/3/96 after Notice 7/31/96—published 10/23/96, effective 10/23/96]
[Filed emergency 11/27/96 after Notice 10/23/96—published 12/18/96, effective 12/18/96]
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[Filed emergency 7/10/98 after Notice 4/8/98—published 7/29/98, effective 7/29/98]
[Filed emergency 9/4/98 after Notice 7/29/98—published 9/23/98, effective 9/23/98]
[Filed emergency 10/30/98 after Notice 9/23/98—published 11/18/98, effective 11/18/98]
[Filed emergency 3/5/99 after Notice 1/27/99—published 3/24/99, effective 3/24/99]
[Filed emergency 1/5/00 after Notice 8/25/99—published 1/26/00, effective 1/26/00]
[Filed 11/20/01, Notice 6/13/01—published 12/12/01, effective 1/16/02]
[Filed 11/21/01, Notice 10/17/01—published 12/12/01, effective 1/16/02]
[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]
[Filed 10/28/04, Notice 7/21/04—published 11/24/04, effective 12/29/04]
[Filed 3/9/06, Notice 1/18/06—published 3/29/06, effective 5/3/06]
[Filed 4/18/06, Notice 3/1/06—published 5/10/06, effective 6/14/06]
[Filed 6/14/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed emergency 7/28/06—published 8/16/06, effective 8/28/06]
[Filed 1/10/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]
[Filed 2/8/08, Notice 1/2/08—published 2/27/08, effective 5/15/08]
[Filed ARC 7699B (Notice ARC 7541B, IAB 2/11/09), IAB 4/8/09, effective 5/13/09]
[Filed ARC 8997B (Notice ARC 8862B, IAB 6/16/10), IAB 8/11/10, effective 9/15/10]
[Filed ARC 9230B (Notice ARC 9090B, IAB 9/22/10), IAB 11/17/10, effective 12/22/10]
[Filed ARC 9755B (Notice ARC 9640B, IAB 7/27/11), IAB 9/21/11, effective 10/26/11]
[Filed ARC 0173C (Notice ARC 0105C, IAB 4/18/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 0282C (Notice ARC 0175C, IAB 6/27/12), IAB 8/22/12, effective 9/26/12]
[Filed ARC 0726C (Notice ARC 0587C, IAB 2/6/13), IAB 5/1/13, effective 6/5/13]
[Filed ARC 0898C (Notice ARC 0752C, IAB 5/29/13), IAB 8/7/13, effective 9/11/13]
[Filed ARC 1049C (Notice ARC 0905C, IAB 8/7/13), IAB 10/2/13, effective 11/6/13]

CHAPTER 27
PROTECTIVE CLOTHING AND EQUIPMENT STANDARDS FOR FIREFIGHTERS

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/7/98, see 347—Ch 27]

Rescinded IAB 7/4/07, effective 8/8/07

CHAPTER 28
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

[Prior to 9/24/86, Labor, Bureau of[530]]
[Prior to 10/7/98, see 347—Ch 28]

875—28.1(88) Adoption by reference. Rules 1928.1, 1928.21, 1928.51-1928.53 and 1928.57, as adopted by the United States Secretary of Labor, shall be rules for implementing Iowa Code chapter 88. This rule adopts the federal Occupational Safety and Health Standards for Agriculture, 29 CFR 1928 as published at 40 Fed. Reg. 18253-18268 (April 25, 1975) and as amended at:

41 Fed. Reg. 10190 (March 9, 1976)
41 Fed. Reg. 11022 (March 16, 1976)
41 Fed. Reg. 22268 (June 2, 1976)
41 Fed. Reg. 46598 (October 22, 1976)
42 Fed. Reg. 37668 (July 22, 1977)
42 Fed. Reg. 38569 (July 29, 1977)
43 Fed. Reg. 27463 (June 23, 1978)
43 Fed. Reg. 28474 (June 30, 1978)
43 Fed. Reg. 35036 (August 8, 1978)
46 Fed. Reg. 32022 (June 19, 1981)
52 Fed. Reg. 16095 (May 1, 1987)
58 Fed. Reg. 21778 (April 23, 1993)
59 Fed. Reg. 6170 (February 9, 1994)
59 Fed. Reg. 36699 (July 19, 1994)
59 Fed. Reg. 51748 (October 12, 1994)
61 Fed. Reg. 5510 (February 13, 1996)
61 Fed. Reg. 9255 (March 7, 1996)
70 Fed. Reg. 77003 (December 29, 2005)
76 Fed. Reg. 33606 (June 8, 2011)

These federal rules shall apply and be interpreted to apply to the Iowa occupational safety and health Act, Iowa Code chapter 88 and enforcement by the labor commissioner.

This rule is intended to implement Iowa Code sections 84A.1, 84A.2, 88.2 and 88.5.

[**ARC 9755B**, IAB 9/21/11, effective 10/26/11]

[Filed 2/20/76, Notice 12/29/75—published 3/8/76, effective 4/15/76]
[Filed 6/21/76, Notice 5/17/76—published 7/12/76, effective 8/20/76]
[Filed 4/13/77, Notice 3/9/77—published 5/4/77, effective 6/9/77]
[Filed 11/3/78, Notice 9/20/78—published 11/29/78, effective 1/10/79]
[Filed 4/22/83, Notice 3/16/83—published 5/11/83, effective 6/15/83]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed emergency 5/12/87—published 6/3/87, effective 5/14/87]
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[Filed 6/14/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed ARC 9755B (Notice ARC 9640B, IAB 7/27/11), IAB 9/21/11, effective 10/26/11]

CHAPTER 29
SANITATION AND SHELTER RULES FOR RAILROAD EMPLOYEES

[Prior to 9/24/86, Labor, Bureau of[530]]
[Prior to 6/22/94, see 347—Chapter 52]
[Prior to 10/21/98, see 347—Ch 29]

875—29.1(88) Definitions. As used herein or in connection with these rules, the following terms shall mean:

29.1(1) *Bunk or section house.* Any building or portion thereof, excepting a family dwelling, in which persons employed by railroad companies are furnished sleeping or living accommodations.

29.1(2) *Caboose.* Any car or coach used on a train to carry the train crew.

29.1(3) *Camp car.* Any group of sleeping, dining, kitchen or recreation cars, on or off rail, furnished for the use of any one gang or group of employees.

29.1(4) *Commissioner.* The labor commissioner.

29.1(5) *Company.* A common carrier railroad company as an employer.

29.1(6) *Employee.* Any person employed by a company to which these rules apply.

29.1(7) *Dressing room.* A room used by employees either as a dressing room, or as a rest room, or for both purposes.

29.1(8) *Number of employees.* Unless otherwise specified, the maximum number of employees going on or coming off shift within any single hour.

29.1(9) *Railroads.* Common carrier railroads.

29.1(10) *Sanitary.* Free from or effective in preventing or checking agencies injurious to health, especially filth and infection.

29.1(11) *Station.* A location where freight or passenger traffic is ordinarily received and delivered and at which an employee is regularly assigned for duty.

29.1(12) *Terminal.* A location where engine and train crews in yard and train service and switchmen, switch tenders and car clerks are regularly required to report for or relieved from duty.

29.1(13) *Toilets.* Fixtures such as flush toilets, chemical closets, incinerator type toilets, or privies for the purpose of defecation, unless otherwise specified.

29.1(14) *Usual place of employment.* The place where an employee works with a reasonable measure of continuity throughout the major part of company service.

29.1(15) *Yards.* Yards, section headquarters, locomotive and car shops.

29.1(16) *Office work area.* A yard office, station, depot, terminal, or freight, baggage and express office which is a permanent or semipermanent stationary facility located on railroad property and a usual place of employment for the performance of clerical or work concerned with or identified with the office functions of the company.

875—29.2(88) Water supply.

29.2(1) *General specifications.* Water supplied for domestic and drinking purposes under these regulations shall meet the standards of the Iowa department of public health. Cross-connections between a potable and nonpotable water supply are prohibited.

29.2(2) *Drinking water.*

a. An adequate supply of cool, clean, sanitary water, satisfactory for drinking purposes, shall be made available to all employees. Drinking water shall be obtained only from sources approved by the state department of health or an approved water line.

b. When necessary, this water shall be provided in suitable, clean, sterilized and sanitary containers conveniently placed for the use of employees, but not in toilet rooms. Each container shall be equipped with an approved type of fountain, approved faucet or other approved dispenser.

c. All containers used to furnish drinking water shall be thoroughly cleansed and sterilized as often as necessary to ensure a clean and sanitary water supply.

d. The common drinking cup for public use is prohibited; either single-service containers or drinking fountains with sanitary angle head shall be used in lieu thereof.

29.2(3) *Required locations.*

a. *Running facilities.* Drinking water which meets the specifications of 29.2(1) and 29.2(2) shall be provided on the following equipment when in use and when offered for use at terminals having servicing or replenishing facilities:

(1) All locomotives.

(2) Baggage and express cars (where employees are assigned for work en route).

(3) Cabooses.

(4) Camp cars.

b. *Stationary facilities.* Drinking water, according to the general specifications shall be made available at the following locations:

(1) All terminals.

(2) All yard offices.

(3) All stations.

(4) All freight, baggage, and express offices (located on railroad property).

(5) All shops and engine houses.

(6) All bunk or section houses and section headquarters.

(7) All lunchrooms located on railroad property.

(8) All permanent watchmen shelters at public highway crossings.

(9) All maintenance-of-way camps.

(10) All office work areas.

29.2(4) *Washing facilities.*

a. *General specifications—wash basins—lavatories.*

(1) Wash basins or lavatories shall be made of vitrified glazed earthenware, vitreous enameled metal, or other smooth-finished material, impervious to moisture.

(2) Twenty-four inches of trough or circular wash basin shall be considered the equivalent of one wash basin. The trough or circular wash basins shall not be equipped with a plug or stopper.

(3) Spring-closing, hand-operated faucets are prohibited in trough wash sinks or circular basins.

b. *Wash basins—availability.*

(1) An adequate number of wash basins or lavatories for maintaining personal cleanliness shall be provided within reasonable access for all employees normally assigned to work at the following locations: all terminals, all yard offices, all stations, all freight, baggage and express offices (located on railroad property), all shops and engine houses, all lunchrooms located on railroad property and at all bunk or section houses.

(2) There shall be provided one lavatory for every 10 employees (men or women) or portion thereof, up to 100 persons; and over 100 persons, one lavatory for each additional 15 persons or portion thereof.

(3) At least one wash basin shall be located in or adjacent to each toilet room.

c. *Wash basins—supplies.*

(1) Hot and cold running water, preferably a combination, shall be supplied to wash basins.

(2) Mechanical drying facilities or individual towels, either paper or cloth, shall be provided. (The use of common towels is prohibited.)

(3) Waste receptacles shall be provided for used paper towels.

(4) Soap or other suitable cleansing agent shall be supplied at each wash basin.

(5) All supplies shall be adequate to meet the needs for which they are intended, and shall be so maintained by the employer.

(6) Employees shall exercise care to see that unnecessary waste of supplies does not occur.

29.2(5) *Showers, locker rooms, dressing rooms and lockers.*

a. *Showers.*

(1) Showers shall be required when in the judgment of the division of labor services such facilities are necessary at specified locations to protect employees whose work involves exposure to poisonous, infectious or irritating material or to excessive dirt, heat fumes or vapors or other materials or substances injurious to health. Such shower facilities shall be provided in conjunction with adequate and necessary locker or dressing room facilities.

(2) Showers shall be provided with a spray fixture connected to an ample supply and pressure of hot and cold water, preferably mixed by a mixing valve.

(3) Each shower room or compartment shall be constructed of material impervious to moisture.

(4) Each shower compartment shall be not less than 36 inches in width and 36 inches in depth.

b. *Lockers or dressing rooms.*

(1) In all places of employment where, because of the nature of the work, it is necessary to change clothing, a locker room shall be provided separated from toilet rooms by solid partitions and doors. Such locker rooms shall have not less than 80 square feet of floor space per ten employees, or fraction, and for each additional employee not less than 4 additional square feet shall be added thereto. Necessary furniture such as benches and tables shall be provided.

(2) Such locker or dressing rooms shall be properly lighted, heated to a minimum of 65°F and adequately ventilated. Where practicable cross-ventilation shall be provided.

c. *Lockers.* In all places of employment where the nature of the employment requires a change of clothing, individual metal lockers shall be provided. The dimensions of metal lockers shall be not less than 12 inches wide, 18 inches deep and 72 inches high, exclusive of legs or other base. The lockers shall be equipped with a shelf and with not less than one clothes hook for each side or equivalent hanger bar, and also sufficient openings in the door for purposes of ventilation. Wooden lockers are prohibited.

d. *Separate facilities for women.*

(1) In instances where women or girls are employed in such activities, the showers, lockers and dressing rooms used by them shall be separate and apart from those used by the men and boys.

(2) These shall have separate entrances and exits and shall be so marked.

875—29.3(88) Toilets.

29.3(1) *General.*

a. Where running water and sewer or septic tank connections are reasonably available, flush-type toilets and urinals shall be maintained.

b. Chemical toilets or privies may only be used where it is impractical to install inside toilet or urinal facilities.

c. No privy, urinal, cesspool, septic tank or other receptacle for human excrement shall be constructed, maintained or used, except those maintained on moving equipment, which directly or indirectly drains or discharges over, into or upon the surface of the grounds, or into the waters of the state, either directly or indirectly, unless the contents of such urinal, cesspool, septic tank or receptacle for human excrement are subjected to some recognized sterilization treatment approved by the Iowa department of public health.

29.3(2) *Water closets.*

a. Every flush toilet shall have a rim flush bowl or be so constructed as to prevent the accumulation of fecal matter on the bowl. The bowl shall be constructed of vitrified glazed earthenware, enameled metal, or other smooth-finished material impervious to moisture.

b. Every such bowl shall be so installed that the surroundings and floor space can be easily cleaned.

c. No pan, plunger or wash-out water closets are permitted except that pan or double-pan types are permitted for running facilities.

d. Every flush toilet shall have a separate hinged seat made of a material, other than metal, which does not absorb moisture or which shall be finished with varnish or other substances resistant to moisture.

29.3(3) *Urinals.*

a. Every urinal shall be made of vitrified glazed earthenware, enameled metal or other smooth-finished material impervious to moisture.

b. Every urinal shall be located within a toilet room.

c. Twenty-four inches of trough urinal shall be equivalent to an individual urinal.

d. Wherever a slab urinal is installed, the floor, for a distance of not less than 24 inches in front of the urinal shall be sloped toward the urinal drain, and adequate splash guards shall be installed.

e. Every urinal shall be flushed from a water-supplied tank or through valve, and flush valves shall be installed with an approved backflow preventer. Every such tank shall furnish an adequate quantity of

water for each discharge for every fixture. In place of such discharge from a tank or flush valve, water may be allowed to run continuously over slab or trough urinals.

f. Clear floor space allowed for each urinal or its equivalent shall be not less than two feet in width; adequate passage shall be allowed.

29.3(4) *Chemical toilets.* All chemical toilets installed must be of a type approved by the division of labor services. Containers shall be charged with chemical solution of proper strength and their contents shall be agitated daily with proper devices provided for that purpose. When containers are more than two-thirds full, the contents shall be disposed of in an approved manner, such as by burial or into a public sewer system. The stacks connecting the seats with the containers shall be cleaned as often as is necessary to keep them in a clean and sanitary condition.

29.3(5) *Incinerator toilets.* An incinerator toilet may be described as containing a receptacle for toilet waste to which intense heat is applied obtained from electrical current, gas or some heat-producing agent.

a. All incinerator toilets used on railroad equipment in the state of Iowa must be of a type approved by the division of labor services.

b. The installation and method of venting must be approved by the division of labor services.

c. Clear and concise instructions must be provided by the railroad company to ensure that the units are operated correctly.

29.3(6) *Privies.*

a. All privies shall be located so as to avoid contaminating any water of the state.

b. A suitable approach, such as concrete, gravel or cinder walk shall be provided.

c. Privies shall be constructed and maintained insect and rodent proof.

d. Every privy shall be provided with a door and such door shall be self-closing.

e. The lids over the seats shall be so constructed as to fall into a closed position when the seat is not occupied.

f. The pit or vault shall be ventilated to the outside air by means of a stack protected at its outlet and by screens.

g. Individual seats shall be provided in accordance with the ratio hereinafter set forth.

29.3(7) *Toilet rooms—specifications for.*

a. *Separation.*

(1) No toilet room shall have direct communication with any room in which unwrapped food products are prepared, stored, handled or sold, unless separated from said room by a self-closing door maintained in operating condition.

(2) Separate toilet facilities shall be provided for each sex, and each toilet room shall be plainly marked by a sign reading “MEN” or “WOMEN”, as the case might be.

(3) There shall be no direct connection between toilet rooms for men and women. Each shall have a separate entrance, and each door leading thereto shall have an automatic closing device maintained in operating condition.

b. *Compartments.* Each water closet in toilet rooms containing more than one water closet, or water closets, together with one or more urinals, shall be in an individual compartment.

c. *Ventilation.* Every toilet room shall be adequately ventilated.

d. *Lighting.* All toilet facilities shall be clearly lighted at all times during working hours.

e. *Heating.* Except privies, every toilet room shall be kept adequately heated.

f. *Screens.* All windows, ventilators and other openings, shall be screened to prevent the entrance of insects. Toilet rooms shall be kept free of insects and vermin.

29.3(8) *Toilets—number required—general.*

a. Adequate toilet facilities shall be provided for all employees, and for each sex. Such facilities shall be conveniently located and accessible and shall be maintained in a usable and sanitary condition at all times.

b. The following table shall be used as a guide in determining the adequacy of toilet facilities.

Number of Employees	Minimum Number of Facilities
1 to 10 persons	1 toilet
11 to 24 persons	2 toilets
25 to 49 persons	3 toilets
50 to 74 persons	4 toilets
75 to 100 persons	5 toilets
Over 100	1 toilet for each additional 30 persons

c. Whenever urinals are provided, one urinal may be substituted for one toilet, provided the number of toilets shall not be reduced to less than two-thirds of the number shown in the foregoing table.

29.3(9) *Toilets—supplies.*

a. *Toilet paper.* An adequate supply of toilet paper with holder shall be supplied by the employer for each toilet.

b. *Sanitary napkins.* In all toilet rooms used by women the company shall permit the installation of dispensing machines for sanitary napkins.

29.3(10) *Toilets—location of and type.*

a. *Running facilities.* Flush type, chemical type or incinerator type toilets shall be provided on the following running facilities.

(1) All locomotives except when used in yard service or as unmanned auxiliary units.

(2) Baggage and express cars where employees are required to work en route.

(3) Cabooses.

b. *Stationary facilities.* Appropriate type toilets, according to the specifications herein, shall be provided and made accessible to all employees at the following locations:

(1) All terminals.

(2) All yard offices.

(3) All stations or depots.

(4) All freight, baggage and express offices (located on railroad property).

(5) All engine houses and shops.

(6) All bunk or section houses and section headquarters.

(7) Lunchrooms located on railroad property.

(8) All maintenance-of-way camps.

(9) Crossing watchman locations, where practicable, and where such facilities are not otherwise readily and conveniently located.

(10) All office work areas.

875—29.4(88) Eating places and lunchrooms.

29.4(1) *Eating places.*

a. Whenever practicable and at all permanent and semipermanent installations, an acceptable place, maintained in clean and sanitary condition, with adequate space for eating meals shall be provided for employees who bring their meals to their place of employment, or eat their meals prepared at the camp facilities.

b. Eating places shall be so constructed as to permit their being readily cleaned, and they shall be kept clean, in good repair and free of rodents, insects and vermin.

c. Kitchen cars or other camp facilities shall have adequate equipment for the sanitary preparation, cooking and refrigeration of food.

29.4(2) *Lunchrooms.*

a. In lunchrooms where food is served for employees, the food, equipment, and facilities shall be subject to the same inspection and regulation as is required in public eating places, generally consistent with the rules of the state pertaining to public food establishments.

b. Employees and workers handling and serving food in such places shall be subject generally to those rules of the state which are necessary to the sanitary handling of food.

c. Concessionaire facilities provided by the company in lieu of direct company operation shall comply with these rules with respect to adequate space, adequate food handling facilities and cleanliness.

d. Adequate table and seating facilities shall be provided for the maximum number of employees using the room at any one time.

29.4(3) *Lunchrooms and eating places—additional requirements.*

a. *General.* The minimum area of lunchrooms, or the amount of space to be added to that required for a locker room where a lunchroom is not provided, shall be based upon the maximum number of employees using the room or added space at any one time, generally in accordance with the following table:

Number of Employees	Square Feet Per Employee
25 and less	13
26 to 74	12
75 to 149	11
150 and over	10

b. *Ventilation.* Every eating place and lunchroom shall be adequately ventilated. Where practicable cross-ventilation shall be provided.

c. *Lighting.* All lunchrooms shall be clearly lighted at all times during hours of use.

d. *Heating.* Every lunchroom shall be kept reasonably heated at all times.

e. *Screens.* The windows, ventilators and doors opening to the outside of all lunchrooms shall be properly screened during the season when insects are prevalent.

f. *Waste disposal.* One or more covered receptacles, as may be necessary, shall be furnished in lunchroom and eating places for the disposal of waste food and other waste matter. Such containers shall be emptied regularly and cleaned as often as is necessary. The area where the receptacles are kept shall be maintained free of litter occurring from the possible overflow of such receptacles.

875—29.5(88) Sleeping accommodations.

29.5(1) *Running facilities.* Camp cars, other than passenger coaches, furnished for sleeping purposes, shall provide at least 50 square feet of floor space for each person with a ceiling height of not less than 7 feet, except where double bunks are used, at least 30 square feet of floor space shall be provided for each person so accommodated. Where passenger coaches are furnished, the division of labor services may designate the number of persons to be housed in each coach.

a. Walls, floors and ceilings shall be so constructed as to permit them to be readily cleaned.

b. Exterior windows and doors shall be weather stripped during the cold weather.

c. Screens shall be provided during the season when insects are prevalent for outer doors and windows.

d. Heating facilities and adequate fuel shall be provided with which employees may maintain a comfortable temperature as weather conditions may require.

e. Lighting by windows or acceptable artificial illumination shall be provided.

f. Ventilation shall be provided by windows opening directly to the outside air.

g. Beds, bunks or cots with proper mattresses shall be provided. Such beds, bunks or cots shall be raised at least 12 inches above the floor and be located 2 feet or more from the side of any other bed, bunk or cot located in the same room, and have at least 27 inches of clear space above it.

29.5(2) *Stationary facilities.*

a. Dormitories or bunk rooms shall be of such area as to provide at least 50 square feet of floor area for each person, except where double bunks are used, at least 30 square feet of floor space shall be provided for each person so accommodated. The headroom of dormitories or bunk rooms shall be at least 7 feet.

b. Specifications for walls, floors and ceilings, lockers, drinking water, toilet accommodations, washing facilities, ventilation, lighting, heat, weather stripping, screening, beds, bunks or cots as described in running facilities of this rule shall apply to stationary facilities.

875—29.6(88) Cleanliness and maintenance.

29.6(1) *General specifications.*

a. The company shall provide for the cleanliness and maintenance of the facilities, fixtures and appurtenances referred to in these regulations. Said fixtures shall be maintained in proper working order when offered for use.

b. Frequency of regular and thorough cleansing shall be determined in each case by the amount of traffic; and in all instances the frequency of cleaning shall be adequate to keep said facilities, fixtures and appurtenances free from vermin and rodents and clean and wholesome at all times.

c. Toilet rooms and washrooms shall not be used for storage. Posters or signs shall be placed in toilet rooms requesting cooperation of employees in keeping the premises clean.

29.6(2) *Floors.* Floors shall be maintained in a clean and, so far as practicable, dry condition. Where wet processes are used, drainage shall be maintained and false floors, platforms, mats or other dry standing places shall be provided wherever practicable.

29.6(3) *Screens.* Screens required by these rules shall be of 16 mesh or equal.

29.6(4) *Cuspidors.* Where cuspidors are used, they shall be of such construction as to be cleanable and shall be kept in a clean condition.

29.6(5) *Receptacles for waste.* Suitable receptacles shall be provided and used for the storage of waste and refuse and shall be maintained in a sanitary condition. Receptacles used for moist or liquid waste shall be made of metal or glazed earthenware, or be metal-lined, and shall not leak. They shall be kept covered and shall be washed out as often as necessary to keep them clean.

29.6(6) *Removal of sweepings, waste and refuse.* All sweepings, waste and refuse shall be removed in such a manner as to avoid raising dust and as often as necessary to keep all rooms used by employees clean.

29.6(7) *Yard servicing areas.* Toilet waste shall not be discharged onto the ground surface from railroad cars within servicing areas of yards. Such areas shall be kept free of refuse, litter, debris, vermin and rodents.

29.6(8) *Yard repair areas.* Where work is performed in repair yards or on repair tracks in the open or in open sheds of pits, adequate drainage shall be provided. This waste shall not drain into any water of the state, nor contaminate the ground surface, but must be disposed of in a manner approved by the Iowa department of public health.

29.6(9) *Running facilities.*

a. Locomotives and yard diesels. During use, the cabs on locomotives shall be heated to a minimum of 50°F at floor level.

(1) When necessary to comply with 29.6(1)*"a"* and 29.6(1)*"b"* herein, all locomotives shall have their floors and toilets cleaned and their windows washed when offered for use at terminals having servicing facilities.

(2) When required by the season of the year, doors and windows of all locomotives shall be equipped with adequate protection to occupants from the elements by means of weather stripping, or other device sufficient to provide equally adequate protection.

b. Cabooses.

(1) Cabooses shall be maintained in a clean and sanitary condition.

(2) When required by the season of the year, doors and windows of cabooses shall be equipped with adequate weather stripping.

(3) When necessary to comply with 29.6(1)*"a"* and 29.6(1)*"b"* herein, cabooses shall have their toilets cleaned and their windows washed when offered for use at terminals having servicing facilities.

(4) Every caboose used in any train in this state, regardless of service, shall be provided with a stove or other adequate means of heating. A sufficient supply of fuel for the trip or shift shall be provided. Cabooses shall be heated to a minimum of 50°F at floor level.

c. Running facilities shall be equipped with shatterproof glass.

29.6(10) *Stationary facilities.*

a. *Bed linen.* Where bed linen is furnished by the railroad it shall be changed and fresh clean linen supplied at least once a week or for each new occupant.

b. *Crossing watchman facilities.* Adequate shelter shall be furnished and maintained for crossing watchman. Such shelter shall be adequately heated, sealed and insulated against cold and inclement weather.

c. *Office work areas.*

(1) Office work areas shall be maintained in clean and wholesome condition when offered for use.

(2) Office work areas shall be clearly lighted at all times during hours of use.

(3) Office work areas shall be heated at all times during hours of use at not less than 65°F.

(4) Office work areas shall be provided with cross-ventilation when possible.

(5) Windows, ventilators and doors opening to the outside of office work areas shall be properly screened during the seasons when insects are prevalent.

875—29.7(88) Conflicts resolved. In the event the rules in this chapter conflict or contain provisions inconsistent with the rules in 875—Chapter 10, "General Industry Safety and Health Rules," or 875—Chapter 26, "Construction Safety and Health Rules," the applicable provisions of 875—Chapter 10 or 875—Chapter 26 shall prevail.

These rules are intended to implement Iowa Code section 88.5(12).

[Filed 6/14/72]

[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]

[Filed emergency 6/3/94—published 6/22/94, effective 7/1/94]

CHILD LABOR

CHAPTERS 30 and 31
Reserved

CHAPTER 32
CHILD LABOR

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 32]

875—32.1(92) Definitions.

"Filing date" means the date a document is postmarked by the U.S. Postal Service, if the document is filed by mailing and the U.S. postmark is legible. For a document filed via facsimile transmission, "filing date" means the date the document is transmitted. For any other document, "filing date" means the date the document is received by the labor commissioner.

"Issuing officer" means a person with a statutory obligation to issue work permits, migrant labor permits, street trade permits, and certificates of age. The school superintendent and the designated employees of the department of workforce development are issuing officers.

"Migrant labor permit" means an authorization to work as described in Iowa Code section 92.12.

"Occupation or business operated by the child's parents," as used in Iowa Code section 92.17(4), means a business operated by the child's parent where the parent has control of the day-to-day operation of the business and is on the premises during the hours of the child's employment.

"Part-time," as used in Iowa Code section 92.17(3), means one-half of the maximum hours allowed under Iowa Code chapter 92.

"Part-time, occasional, or volunteer work," as used in Iowa Code section 92.17(1), means work for which compensation is not usually given.

"Serious injury or illness" means an illness or injury requiring medical attention beyond first aid.

"Street trade" means an occupation performed on any street including but not limited to newspaper sales, newspaper delivery, and door-to-door sales.

"Street trades permit" means an authorization as described in Iowa Code section 92.2 to perform a street trade.

"Superintendent," in a public school, means the superintendent or the superintendent's designee. In a private school, "superintendent" means the superintendent, or another person with comparable responsibilities, or that person's designee.

"Week," as used in Iowa Code section 92.7, means Sunday through Saturday.

"Working days," as used in rule 875—32.12(92), means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

"Work permit" means an authorization to work as described in Iowa Code section 92.10.

This rule is intended to implement Iowa Code chapter 92 as amended by 2009 Iowa Acts, House File 618.

[**ARC 8300B**, IAB 11/18/09, effective 1/1/10]

875—32.2(92) Permits and certificates of age.

32.2(1) *When permits and certificates of age are required.* A street trades permit is required for a child who is at least 10 years of age, who is less than 16 years of age, and who desires to work in a street trade. A migrant labor permit is required for a child who is at least 12 years of age, who is less than 16 years of age, and who desires to perform migratory labor as defined in Iowa Code section 92.18. A work permit is required for a child who is 14 or 15 years of age and who desires to perform work other than street trades and migratory labor. An employer may require a certificate of age for a child 16 or 17 years of age.

32.2(2) *How permits and certificates of age are issued.* The Iowa Child Labor Form, form number 62-2203, shall be completed for a street trade permit, a certificate of age, a migrant labor permit, or a work permit. The following procedure shall be used for completing the form:

a. After accepting an offer of employment and before beginning work, an applicant shall obtain an appropriate document establishing the applicant's age and shall personally take the document to the local superintendent or a department of workforce development office. Locations of workforce development offices are available at www.iowaworkforce.org. The document establishing age shall be:

(1) A certified copy of the applicant's birth certificate, if it is available.

(2) If a certified copy of the applicant's birth certificate is not available, the applicant's passport or a certified copy of the applicant's baptismal record.

(3) If none of the documents listed in (1) and (2) are available, one of the following documents shall be used:

1. A visa issued by the U.S. government.

2. A resident alien card issued by the U.S. government.

3. A physician's affidavit certifying the applicant's age. A sample physician's affidavit is available at http://www.iowaworkforce.org/labor/childlabor.htm.

b. The issuing officer shall provide the applicant a copy of the Iowa Child Labor Form along with instructions for completing the form.

c. The applicant shall follow all necessary steps to complete the applicable portions of the form and return the form to the issuing officer.

d. The issuing officer shall review the information on the form and, if appropriate, shall sign and date the form. The issuing officer shall make copies of the completed document and distribute them according to the labor commissioner's instructions.

This rule is intended to implement Iowa Code chapter 92 as amended by 2009 Iowa Acts, House File 618.

[**ARC 8300B**, IAB 11/18/09, effective 1/1/10]

875—32.3 and **32.4** Reserved.

875—32.5(92) Other work. Definition of "other work" as used in Iowa Code section 92.5(11) includes manual detasseling of corn when performed from power-operated detasseling machines.

This rule is intended to implement Iowa Code section 92.5.

875—32.6 Reserved.

875—32.7(92) Workweek. Definition of "week" as used in Iowa Code section 92.7 is interpreted to mean Sunday through Saturday.

This rule is intended to implement Iowa Code section 92.7.

875—32.8(92) Terms. The terms used in Iowa Code section 92.8 are defined and applied as specified in this rule.

32.8(1) *"Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components"* means:

a. All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in subrule *"b."*) manufacturing or storing explosives or articles containing explosive components except where the occupation is performed in a "nonexplosive area."

b. The following occupations in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(1) All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

(2) All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.

(3) All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(4) All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.

(5) All occupations involved in the loading, inspecting, packing, shipping and storage of blasting caps.

c. Definitions.

"Explosives" and *"articles containing explosive components"* means and includes ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR Parts 71-78, in effect July 1, 1987).

"Nonexplosive area" means an area where none of the work performed in the area involves the handling or use of explosives; the area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings; the area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet the criteria of this definition.

"Plant or establishment manufacturing or storing explosives or articles containing explosive components" means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.

This subrule is intended to implement Iowa Code section 92.8(1).

32.8(2) *"Occupations of motor vehicle driver and helper"* means occupations of motor vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation.

a. "Occupations of motor vehicle driver and helper" does not include:

(1) Incidental and occasional driving where the operation of automobiles or trucks does not exceed 6,000 pounds gross vehicle weight if the driving is restricted to daylight hours; the operation is only occasional and incidental to the child's employment; the child holds a state license valid for the type of driving involved in the job which is to be performed and has completed a state-approved driver education course; the vehicle is equipped with a seat belt or similar device for the driver and for each helper; and the employer has instructed each child that the belts or other devices must be used. This exemption shall not be applicable to any occupation of a motor vehicle driver which involves the towing of vehicles.

(2) During daylight hours, a child who is 16 or 17 years of age driving a golf cart on or across a golf course or a private or public roadway that crosses a golf course if the child has passed a state-approved driver education class; the child holds a full license, an intermediate license, or a Class C noncommercial operator's license; and the child has been trained on use of the golf cart.

b. Definitions.

"Driver" means any individual who, in the course of employment, drives a motor vehicle at any time.

"Gross vehicle weight" includes the truck chassis with lubricants, water and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis, and body equipment and payload.

"Motor vehicle" means any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.

"Outside helper" means any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.

This subrule is intended to implement Iowa Code section 92.8(2).

32.8(3) *"Occupations involved in logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill"* means all occupations with the following exceptions:

a. Exceptions applying to logging:

(1) Work in offices or in repair or maintenance shops.

(2) Work in the construction, operation, repair or maintenance of living and administrative quarters or logging camps.

(3) Work in timber cruising, surveying, or logging-engineering parties; work in the repair or maintenance of roads, railroads, or flumes; work in forest protection, such as clearing fire trails or roads, piling and burning slash, maintaining firefighting equipment, constructing and maintaining telephone lines, or acting as fire lookout or fire patrol person away from the actual logging operations. This exception shall not apply to the felling or bucking of timber, the collecting or transporting of logs, the operation of power-driven machinery, the handling or use of explosives, and work on trestles.

(4) Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging occupations prohibited by this subrule.

(5) Work in the feeding or care of animals.

b. Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage-stock mill:

(1) Work in offices or in repair or maintenance shops.

(2) Straightening, marking, or tallying lumber on the dry chain or the dry drop sorter.

(3) Pulling lumber from the dry chain.

(4) Cleanup in the lumberyard.

(5) Piling, handling, or shipping of cooperage stock in yards or storage sheds, other than operating or assisting in the operation of power-driven equipment.

(6) Clerical work in yards or shipping sheds, such as done by order persons, tally persons, and shipping clerks.

(7) Cleanup work outside shake and shingle mills, except when the mill is in operation.

(8) Splitting shakes manually from precut and split blocks with a froe and mallet, except inside the mill building or cover.

(9) Packing shakes into bundles when done in conjunction with splitting shakes manually with a froe and mallet, except inside the mill building or cover.

(10) Manual loading of bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury. The exceptions in paragraph *"b,"* subparagraphs (1) to (10), do not apply to a portable sawmill the lumberyard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained and work which entails entering the sawmill building.

Definitions.

"All occupations in logging" means all work performed in connection with the felling of timbers; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting and unloading of these products in connection with logging; the constructing, repairing and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging. The term shall not apply to work performed in timber culture, timber-stand improvement, or in emergency firefighting.

"All occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill" means all work performed in or about any mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, laths, shingles, or cooperage stock; storing, drying, and shipping lumber, laths, shingles, cooperage stock, or other products of the mills and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term shall not include work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill.

This subrule is intended to implement Iowa Code section 92.8(3).

32.8(4) *"Occupations involved in the operation of power-driven woodworking machines"* means operating power-driven woodworking machines including supervision or controlling the operation

of the machines, feeding material into the machines, and helping the operator to feed material into the machines, but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding. Also included are occupations of setting up, adjusting, repairing, oiling or cleaning power-driven woodworking machines and the operations of off-bearing from circular saws and from guillotine-action veneer clippers.

Definitions.

"Off-bearing" means the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this subrule include:

a. The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expansion roller, and

b. The following operations when they do not involve the removal of material or refuse directly from a saw table or from the point of operation; the carrying, moving or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling or loading of materials.

"Power-driven woodworking machines" means all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening or otherwise assembling, pressing or printing wood or veneer.

This subrule is intended to implement Iowa Code section 92.8(4).

32.8(5) *"Occupations involving exposure to radioactive substances and to ionizing radiations"* means occupation in any workroom in which radium is stored or used in the manufacture of self-luminous compound; self-luminous compound is made, processed or packaged; self-luminous compound is stored, used or worked upon; incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; and other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection, as set forth in the 40-hour week column of Table One of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," June 5, 1959.

Also included is any other work which involves exposure to ionizing radiations in excess of 0.5 rem per year.

Definitions.

"Ionizing radiations" means alpha and beta particles, electrons, protons, neutrons, gamma and X-ray and all other radiations which produce ionizations directly or indirectly, but does not include electromagnetic radiations other than gamma and X-ray.

"Self-luminous compound" means any mixture of phosphorescent material and radium, mesothorium or other radioactive element.

"Workroom" means the entire area bounded by walls of solid material and extending from floor to ceiling.

This subrule is intended to implement Iowa Code section 92.8(5).

32.8(6) *"Occupations involved in the operation of elevators and other power-driven hoisting apparatus"* means:

a. Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one-ton capacity.

b. Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

c. Work of assisting in the operation of a crane, derrick or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

d. Exception. Iowa Code section 92.8(6) shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door and the hoistway doors are constructed of

solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over-travel by the car.

e. Definitions.

"Automatic elevator" means any passenger elevator, a freight elevator or a combination passenger-freight elevator, the operation of which is controlled by push buttons in a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

"Automatic signal operation elevator" means an elevator which is started in response to the operation of a switch (such as a lever or push button) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

"Crane" means any power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot pouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, semigantry, semiportal, storage bridge, tower, walking jib, and wall cranes.

"Derrick" means any power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

"Elevator" means any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators, (including portable elevators or tiering machines), but shall not include dumbwaiters.

"High-lift truck" means any power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include high-lift trucks known as fork lifts, fork trucks, fork-lift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of, material.

"Hoist" means any power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term includes all types of hoists, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

"Manlift" means any device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; the belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

This subrule is intended to implement Iowa Code section 92.8(6).

32.8(7) *"Occupations involved in the operation of power-driven metal forming, punching and shearing machines"* means occupations of operator of or helper on the following power-driven metal forming, punching, and shearing machines.

a. All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.

b. All pressing or punching machines, such as punch presses except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.

c. All bending machines, such as apron brakes and press brakes.

d. All hammering machines, such as drop hammers and power hammers.

e. All shearing machines, such as guillotine or squaring shears, alligator shears and rotary shears.

Also included are the occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

"Forming, punching and shearing machines" means power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls or knives which are mounted on rams, plungers or other moving parts. Types of forming, punching, and shearing machines enumerated in this subrule are the machines to which the designation is by custom applied.

"Helper" means a person who assists in the operation of a machine covered by this subrule by helping place materials into or remove them from the machine.

"Operator" means a person who operates a machine covered by this subrule by performing functions such as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

This subrule is intended to implement Iowa Code section 92.8(7).

32.8(8) *"Occupations in connection with mining"* means all work performed underground in mines and quarries; underground working, open-pit, or surface part of any coal-mining plant that contribute to the extraction, grading, cleaning, or other handling of coal; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing or cleaning operations performed upon the extracted minerals except where the operations are performed as a part of a manufacturing process.

The term "occupations in connection with mining" shall not include:

a. Work performed in subsequent manufacturing or processing operations, such as work performed in smelters, electro-metallurgical plants, refineries, reduction plants, cement mills, plants where quarried stone is cut, sanded and further processed, or plants manufacturing clay, glass or ceramic products.

b. Work performed in connection with petroleum production, in natural gas production, or in dredging operations which are not a part of mining operations, such as dredging for construction or navigation purposes.

c. Work in offices, in the warehouse or supply house, in the change house, in the laboratory, and in repair or maintenance shops not located underground.

d. Work in the operation and maintenance of living quarters.

e. Work outside the mine in surveying, in the repair and maintenance of roads, and in general cleanup about the mine property such as clearing brush and digging drainage ditches.

f. Work of track crews in the building and maintaining of sections of railroad track located in those areas of open-cut metal mines where mining and haulage activities are not being conducted at the time and place that the building and maintenance work is being done.

g. Work in or about surface placer mining operations other than placer dredging operations and hydraulic placer mining operations.

h. Work in metal mills other than in mercury-recovery mills or mills using the cyanide process involving the operation of jigs, sludge tables, flotation cells, or drier-filters; hand-sorting at picking table or picking belts; or general cleanup.

Nothing in this subrule shall be construed to permit any employment of minors in any other occupation otherwise prohibited by Iowa Code chapter 92.

This subrule is intended to implement Iowa Code section 92.8(8).

32.8(9) *"Occupations in or about slaughtering and meat packing establishments and rendering plants"* means:

a. All occupations on the killing floor, in curing cellars, and in hide cellars, except the work of messengers, runners, hand truckers and similar occupations which require entering workrooms or workplaces infrequently and for short periods of time.

b. All occupations involved in the recovery of lard and oils, except packaging and shipping of the products and the operation of lard-roll machines.

c. All occupations involved in tankage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

d. All occupations involved in the operation or feeding of the following power-driven meat processing machines, including the occupations of setting-up, adjusting, repairing, oiling, or cleaning the machines regardless of the product being processed by these machines (including, for example, the slicing in a retail delicatessen of meat, poultry, seafood, bread, vegetables, or cheese, etc.):

1. Meat patty forming machines, meat and bone cutting saws, knives (except bacon-slicing machines), head splitters, and guillotine cutters;
2. Snout pullers and jaw pullers;
3. Skinning machines;
4. Horizontal rotary washing machines;
5. Casing-cleaning machines such as crushing, stripping, and finishing machines;
6. Grinding, mixing, chopping, and hashing machines; and
7. Presses (except belly-rolling machines).

e. All boning occupations.

f. All occupations involving the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.

g. All occupations involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

Definitions.

"Boning occupation" means the removal of bones from meat cuts. It does not include cutting, scraping or trimming meat from cuts containing bones.

"Curing cellar" means the workroom or workplace which is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include the workroom or workplace where meats are smoked.

"Hide cellar" means the workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.

"Killing floor" means the workroom or workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.

"Rendering plants" means establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients and similar products.

"Slaughtering and meat packing establishments" means places in or about which cattle, calves, hogs, sheep, lambs, goats, or horses, poultry, rabbits or small game are killed, processed or butchered and establishments which manufacture or process meat products or sausage casings from these animals.

This subrule is intended to implement Iowa Code section 92.8(9).

32.8(10) *"Occupations involved in the operation of certain power-driven bakery machines"* means the occupations of operating, assisting to operate or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machines; or cake cutting band saw and the occupations of setting up or adjusting a cookie or cracker machine.

This subrule is intended to implement Iowa Code section 92.8(10).

32.8(11) *"Occupations involved in the operations of paper-products machines"* means operating or assisting to operate any of the following power-driven paper-products machines and includes:

a. Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single- or double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.

b. Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.

c. The occupations of setting up, adjusting, repairing, oiling, or cleaning the machines in paragraphs *"a"* and *"b"* of this subrule including those which do not involve hand feeding.

Definitions.

"Operating or assisting to operate" means all work which involves starting or stopping a machine covered by this subrule, placing materials into or removing them from the machine, or any other work directly involved in operating the machine.

"Paper-products machine" means power-driven machines used in:

1. The remanufacture or conversion of paper or pulp into a finished product, including the preparation of materials for recycling.

2. The preparation of materials for disposal. The term applies to the machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishments.

This subrule is intended to implement Iowa Code section 92.8(11).

32.8(12) *"Occupations involved in the manufacture of brick"* means the manufacture of brick, tile and related products and includes the manufacture of clay construction products and of silica refractory products and includes:

a. All work in or about establishments in which clay construction products are manufactured, except work in storage and shippings; work in offices, laboratories, and storerooms; and work in the drying departments of plants manufacturing sewer pipe.

b. All work in or about establishments in which silica brick or other silica refractories are manufactured, except work in offices.

c. Nothing in this subrule shall be construed to permit any employment of minors in any other occupation otherwise prohibited by Iowa Code chapter 92.

Definitions.

"Clay construction products" means brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. It does not include nonstructural-bearing clay products such as ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor nonclay construction products such as sand-lime brick, glass brick, or nonclay refractories.

"Silica brick or other silica refractories" means refractory products produced from raw materials containing free silica as its main constituent.

This subrule is intended to implement Iowa Code section 92.8(12).

32.8(13) *"Occupations involved in the operation of circular saws, band saws, and guillotine shears"* means:

a. Occupations of operator of or helper on power-driven fixed or portable circular saws, band saws, and guillotine shears except machines equipped with full automatic feed and ejection.

b. The occupations of setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, or guillotine shears.

Definitions.

"Band saw" means a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

"Circular saw" means a machine equipped with an endless steel disc and having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

"Guillotine shear" means a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

"Helper" means a person who assists in the operation of a machine covered by this subrule by helping place materials into or remove them from the machine.

"Machines equipped with full automatic feed and ejection" means machines covered by this subrule which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any body part in the point-of-operation area.

"Operator" means a person who operates a machine covered by this subrule by performing functions such as starting or stopping the machine, placing materials into or removing them from the machine, or any other function directly involved in the operation of the machine.

This subrule is intended to implement Iowa Code section 92.8(13).

32.8(14) *"Wrecking, demolition and shipbreaking operations"* means all work, including cleanup and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel.

This subrule is intended to implement Iowa Code section 92.8(14).

32.8(15) *"Roofing operations"* means all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate, metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term also includes all work performed in connection with the installation of roofs, including related metal work such as flashing; and alterations, additions, maintenance and repair, including painting and coating, of existing roofs. The term shall not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment or similar appliances attached to roofs.

This subrule is intended to implement Iowa Code section 92.8(15).

32.8(16) *"Excavation occupations"* means all occupations involved with:

a. Excavating, working in, or backfilling (refilling) trenches, except manually excavated or manually backfilling trenches that do not exceed four feet in depth at any point or working in trenches that do not exceed four feet in depth at any point.

b. Excavating for buildings or other structures or working in the excavations, except manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, working in an excavation not exceeding four feet in depth, or working in an excavation where the side walls are shored or sloped to the angle or repose.

c. Working within tunnels prior to the completion of all driving and shoring operations.

d. Working within shafts prior to the completion of all sinking and shoring operations.

This subrule is intended to implement Iowa Code section 92.8(16).

32.8(17) to **32.8(20)** Reserved.

32.8(21) Occupations deemed by the labor commissioner to be hazardous to life or limb as provided by Iowa Code section 92.8(21) include the following:

a. Occupations involved in the operation of power cutters on corn detasseling machines.

b. Occupations involved in the driving of power-driven detasseling machines provided that the driver has a valid driver's license or a certificate issued by the Federal Extension Service showing that the driver has completed a 4-H farm and machinery program.

This subrule is intended to implement Iowa Code section 92.8(21).

This rule is intended to implement Iowa Code section 92.8.

[**ARC 9963B**, IAB 1/11/12, effective 2/15/12]

875—32.9 and **32.10** Reserved.

875—32.11(92) Civil penalty calculation. The labor commissioner shall follow the provisions of this rule when calculating civil penalties for violations of this chapter or Iowa Code chapter 92 as amended

by 2009 Iowa Acts, House File 618. The labor commissioner may refer a violation to the appropriate authority for criminal prosecution in addition to assessing a civil penalty.

32.11(1) *Counting the number of violations.* Each item of inaccurate information on each permit shall be a separate violation. Each day that each child works at a time not listed on the permit, works on a day not listed on the permit, works at an occupation not listed on the permit, works without a permit, works on a prohibited day, works at a prohibited time, or works in a prohibited occupation shall be a separate violation for the purpose of penalty calculation.

32.11(2) *Determining whether a violation is a repeat violation.* The higher penalty amounts outlined in subrules 32.11(3) through 32.11(5) for repeat instances may be assessed by the labor commissioner if citations regarding the earlier instance or instances are final action and occurred less than five years before.

32.11(3) *Permit violations.*

a. Inaccurate information on a street trades permit, migrant labor permit, or work permit. Insignificant misspellings and typographical errors shall not be considered inaccurate information. A repeated instance of inaccurate information may result in a higher penalty even if the earlier instance or instances of inaccurate information involved a different fact. If a child is killed while working and the child's permit lists the wrong age for the child, the civil penalty shall be $10,000 for each instance. Otherwise, the civil penalties for inaccurate information on the applicable permit are as set forth in the following schedule:

Instance	Penalty
First	Warning letter
Second	$100 civil penalty
Third	$200 civil penalty
Fourth	$500 civil penalty
Fifth	$1,000 civil penalty
Sixth	$2,500 civil penalty
Seventh	$5,000 civil penalty
Eighth	$7,500 civil penalty
Each additional instance	$10,000 civil penalty

b. Working outside a permit. When a child is working outside the days, times or occupations listed on the street trades permit, migrant labor permit, or work permit, and the day, time or occupation the child is working is also prohibited, the labor commissioner may assess civil penalties under this subrule and subrule 32.11(4) or subrule 32.11(5) as applicable. If a child is killed while working outside the days, times or occupations listed on the applicable permit, the civil penalty shall be $10,000 for each instance. Otherwise, the civil penalties for working outside the days, times or occupations listed on the applicable permit are as set forth in the following schedule:

Instance	Penalty
First	$100 civil penalty
Second	$250 civil penalty
Third	$500 civil penalty
Fourth	$1,000 civil penalty
Fifth	$2,500 civil penalty
Sixth	$5,000 civil penalty
Seventh	$7,500 civil penalty
Each additional instance	$10,000 civil penalty

c. *Working without a permit.* When a child is working without a required permit, and the day, time or occupation the child is working is also prohibited, the labor commissioner may assess civil penalties under this subrule and subrule 32.11(4) or subrule 32.11(5) as applicable. If a child is killed while working without a required permit, the civil penalty shall be $10,000 for each instance. Otherwise, the civil penalties for working without a required permit are as set forth in the following schedule:

Instance	Penalty
First	$250 civil penalty
Second	$500 civil penalty
Third	$1,000 civil penalty
Fourth	$2,500 civil penalty
Fifth	$5,000 civil penalty
Sixth	$7,500 civil penalty
Each additional instance	$10,000 civil penalty

32.11(4) *Time violations.* If a child is killed while working on a prohibited day or at a prohibited time, the civil penalty shall be $10,000 for each instance. Otherwise, the penalties set forth in this subrule shall be applied.

a. The civil penalties for working less than 15 minutes before or after an allowed time are as set forth in the following schedule:

Instance	Penalty
First	Warning letter
Second	$100 civil penalty
Third	$200 civil penalty
Fourth	$500 civil penalty
Fifth	$1,000 civil penalty
Sixth	$2,500 civil penalty
Seventh	$5,000 civil penalty
Eighth	$7,500 civil penalty
Each additional instance	$10,000 civil penalty

b. The civil penalties for working on a prohibited day or for working 15 minutes or more before or after an allowed time are as set forth in the following schedule:

Instance	Penalty
First	$100 civil penalty
Second	$250 civil penalty
Third	$500 civil penalty
Fourth	$1,000 civil penalty
Fifth	$2,500 civil penalty
Sixth	$5,000 civil penalty
Seventh	$7,500 civil penalty
Each additional instance	$10,000 civil penalty

32.11(5) *Occupation violations.*

a. If no serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

Instance	Penalty
First	$500 civil penalty
Second	$1,500 civil penalty
Third	$2,500 civil penalty
Fourth	$5,000 civil penalty
Fifth	$7,500 civil penalty
Each additional instance	$10,000 civil penalty

b. If a nonfatal but serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

Instance	Penalty
First	$2,500 civil penalty
Second	$5,000 civil penalty
Each additional instance	$10,000 civil penalty

c. If a fatality results from the work, the civil penalty for allowing or permitting a child to perform prohibited work is $10,000 for each instance.

32.11(6) *Penalty reduction factors.* Except for violations related to the death of a child while working, the labor commissioner shall reduce the penalty calculated pursuant to subrules 32.11(1) through 32.11(5) by the appropriate penalty reduction percentages set forth in this subrule. However, if the labor commissioner requests information relevant to the penalty assessment and the employer does not provide responsive information, the labor commissioner shall not reduce the penalty.

a. *Penalty reduction for size of business.* The labor commissioner shall reduce a penalty by 25 percent if the employer has 25 or fewer employees. The labor commissioner shall reduce the penalty amount by 15 percent if the employer has 26 to 100 employees. The labor commissioner shall reduce the penalty amount by 5 percent if the employer has 101 to 250 employees.

b. *Penalty reduction for good faith.* The labor commissioner may reduce a penalty by 15 percent based upon evidence that the employer made a good faith attempt to comply with the requirements. If at any time the labor commissioner warned an employer in writing about a prohibited practice and a civil penalty is being assessed against the same employer for repeating the practice, the labor commissioner shall not reduce the penalty based on good faith.

c. *Penalty reduction for history.* The labor commissioner shall reduce a penalty by 10 percent if the labor commissioner has not assessed a civil penalty under this chapter within the past five years. If the labor commissioner has assessed a civil penalty under this chapter in the past five years but the civil penalty has not reached judicial or administrative finality, the civil penalty shall be reduced by 10 percent.

This rule is intended to implement Iowa Code section 92.22 as amended by 2009 Iowa Acts, House File 618.

[**ARC 8300B**, IAB 11/18/09, effective 1/1/10]

875—32.12(92) Civil penalty procedures.

32.12(1) *Notice of civil penalty.* The commissioner shall serve a notice of proposed civil penalty by certified mail or in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. The notice shall include the following:

a. A statement that the notice proposes a civil penalty assessment for violation of child labor laws.

b. Descriptions of the alleged violations including the provisions allegedly violated, the number of violations, and the proposed penalties.

c. A statement that the employer has the right to request a hearing by filing a notice of contest with the labor commissioner within 15 working days from the receipt of the notice of proposed civil penalty

and that if a notice of contest is not timely filed, the proposed civil penalty will become final agency action.

d. A reference to the applicable procedural provisions.

32.12(2) *Notice of contest.* The civil penalty proposed by the labor commissioner shall become final agency action if the employer does not timely file a notice of contest. The filing date for a timely notice of contest shall be within 15 working days of the date the notice of proposed civil penalty was received by the employer. The notice of contest shall include the name, address, and telephone number of the employer's representative. If a notice of contest is filed by fax, the original shall be mailed to the labor commissioner.

32.12(3) *Contested case procedures.* Contested case procedures are set forth in 875—Chapter 1 and Iowa Code chapter 17A.

This rule is intended to implement Iowa Code section 92.22 as amended by 2009 Iowa Acts, House File 618.

[**ARC 8300B**, IAB 11/18/09, effective 1/1/10]

875—32.13 to **32.16** Reserved.

875—32.17(92) Definitions.

"Occupation or business operated by the child's parents" as used in Iowa Code section 92.17(4) means those operated by the child's parent where the parent has control of the day-to-day operation of the business and is on the premises during the hours of the child's employment.

"Part-time" as used in Iowa Code section 92.17(3) means one-half of the maximum hours allowed under Iowa Code chapter 92.

"Part-time, occasional, or volunteer work" as used in Iowa Code section 92.17(1) means work for which compensation is not usually given.

This rule is intended to implement Iowa Code section 92.17.

[Filed 4/15/71; amended 2/9/72]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 9/10/87, Notice 7/29/87—published 10/7/87, effective 11/11/87]
[Filed 5/7/93, Notice 3/3/93—published 5/26/93, effective 6/30/93]
[Filed ARC 8300B (Notice ARC 8167B, IAB 9/23/09), IAB 11/18/09, effective 1/1/10]
[Filed ARC 9963B (Notice ARC 9758B, IAB 10/5/11), IAB 1/11/12, effective 2/15/12]

CHAPTER 33
Reserved

CHAPTER 34
CIVIL PENALTIES

875—34.1(91A) Civil penalties for Iowa Code chapter 91A violations. The commissioner may, upon report of an affected employee or based on other credible information, seek to recover civil money penalties for violation(s) of Iowa Code chapter 91A.

875—34.2(91A) Investigation.

34.2(1) Prior to initiating a contested case proceeding, the commissioner shall, in writing, request written information from the complaining employee(s). This request for written information may be omitted for good cause, including urgent circumstances or the possession of sufficient reliable evidence from another source(s).

34.2(2) Prior to initiating a contested case proceeding, the commissioner shall, in writing, inform the employer of the nature of the alleged violation(s) and request the employer to provide, within 14 days, a response with relevant information, including information necessary for the commissioner to assess penalties. This request for written information may be omitted for good cause, including urgent circumstances or the possession of sufficient reliable evidence from another source(s).

34.2(3) The commissioner may secure evidence or witnesses by administrative subpoena.

34.2(4) The commissioner may, in response to a written complaint, request a warrant to enter a place of employment to inspect records, ask questions, and investigate in relation to possible violations of Iowa Code chapter 91A.

875—34.3(91A) Calculation of penalty.

34.3(1) The commissioner shall assess the penalty with due consideration for the size of the employer's business, the gravity of the violation(s), the good faith of the employer, and the history of previous violations by granting appropriate penalty reductions.

34.3(2) The gross penalty for each distinguishable violation shall be $500. The following are examples of distinguishable violations:

a. If the act or omission occurs during five consecutive pay periods affecting a single employee, there are 5 distinguishable violations.

b. If the act or omission occurs during a single pay period affecting 50 employees, there are 50 distinguishable violations.

34.3(3) The size of the business shall be considered as follows:

Number of Employees	Penalty Reduction
1-25	25%
26-100	15%
101-250	5%
251+	0%

34.3(4) Gravity shall be considered by giving a 20 percent penalty reduction for a low-gravity violation or a 10 percent reduction for a medium-gravity violation. High-gravity violations shall receive no gravity reduction. The gravity of a violation shall be based primarily on its actual or potential harm to employees. Following are examples of gravity determinations:

a. A low-gravity violation includes any merely technical violation of Iowa Code chapter 91A that does not substantially prejudice any employee.

b. A high-gravity violation includes any violation causing financial injury to an employee.

34.3(5) Good faith shall be considered by giving a 15 percent penalty reduction when there is sufficient evidence that the employer made earnest attempts to be well-informed about and in compliance with Iowa Code chapter 91A. A good-faith reduction shall not be given if the employer committed a violation(s) after having received a complaint(s) or warning(s) about a practice clearly in violation of Iowa Code chapter 91A.

34.3(6) History shall be considered by giving a 10 percent penalty reduction if the violation(s) was isolated. Consideration shall be given to prior civil penalty complaints and may include prior wage claims. A history reduction shall not be given if the violation(s) for which the penalty is being calculated occurred over an extended period of time.

34.3(7) If the employer does not, upon request of the commissioner, provide information relevant to the penalty assessment, the commissioner may deny any penalty reduction for which the employer does not provide responsive information.

[**ARC 8185B**, IAB 10/7/09, effective 11/11/09]

875—34.4(91A) Settlement opportunity. Prior to initiating a contested case proceeding, the commissioner shall normally request, in writing, that the employer enter into settlement negotiations. This request may be omitted for good cause, including urgent circumstances or reasonable belief that the employer will not comply with the relevant section(s) of Iowa Code chapter 91A as part of a settlement. The commissioner may, in consideration of the overall nature of the violations, the promptness of the employer's remedial action, and administrative efficiency, accept less than the full penalty from the employer at any time as a settlement.

875—34.5(91A) Notice of penalty assessment; contested case proceedings.

34.5(1) To initiate an Iowa Code chapter 17A contested case proceeding, the commissioner shall serve a notice of penalty assessment in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. Such notice shall include the following:

a. A statement that the notice concerns a civil penalty assessment for violation of wage laws.

b. A statement that, if a hearing is requested by the employer, the commissioner shall determine, after the hearing is held pursuant to Iowa Code section 91A.12, subsections 2 and 3, whether the penalty assessment shall be upheld.

c. References to this chapter, Iowa Code section 91A.12, and any sections of Iowa Code chapter 91A that are alleged to have been violated.

d. The type of violation(s).

e. The number of violations.

f. The amount of the penalty.

g. A demand that the employer comply with the notice and record-keeping requirements of Iowa Code section 91A.6(1).

h. A statement that the employer has the right to request a hearing within 30 days.

34.5(2) Employer nonresponse. If the employer does not respond to the notice of penalty assessment within 30 days of being served, the commissioner shall assess the full proposed penalty, and such assessment shall be final.

34.5(3) Employer request for hearing. The employer may request a hearing within 30 days of being served by mailing such request to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. Such request shall include the address to which notice of hearing should be mailed. Upon such request, notice of the time and place of hearing shall be mailed to the employer and a hearing pursuant to Iowa Code chapter 17A shall be conducted before an administrative law judge.

34.5(4) Failure to request judicial review. If, after hearing, the employer does not request judicial review of an adverse decision within 30 days, the ruling is final.

875—34.6(91A) Judicial review.

34.6(1) *Employer petition for Iowa Code chapter 17A judicial review.* The employer may request judicial review of an adverse ruling within 30 days. Such petition for review shall name the agency as respondent and shall contain a concise statement of the following:

a. The nature of the agency action for which review is requested.

b. The action for which review is requested.

c. The facts on which venue is based.

d. The grounds for the relief sought.

e. The relief sought.

34.6(2) *Jurisdiction.* Judicial review shall be in the district court of a county in which at least one violation occurred.

34.6(3) *Transmittal of record.* Within 30 days of the petition for judicial review, or longer as allowed by the court, the commissioner shall transmit the record of the case to the reviewing court.

34.6(4) *District court remedies.* The district court may require the employer to deposit the amount of the assessed penalty with the clerk of court pending the outcome of the judicial review, may uphold the penalty, and may order that the employer comply with the notice and record-keeping requirements of Iowa Code section 91A.6(1).

These rules are intended to implement Iowa Code chapters 91A and 17A.

[Filed 1/16/07, Notice 12/6/06—published 2/14/07, effective 3/21/07]

[Filed ARC 8185B (Notice ARC 7952B, IAB 7/15/09), IAB 10/7/09, effective 11/11/09]

CHAPTER 35
WAGE PAYMENT COLLECTION

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 35]

875—35.1(91A) Definitions.

"Claimant" means an employee who has submitted a wage claim form to the labor commissioner.

"Commissioner" means the labor commissioner of the division of labor services or a designee.

"Division" means the division of labor services of the department of workforce development.

"Employee" is defined in Iowa Code chapter 91A, and does not include an independent contractor.

"Enforceable" means eligible for the enforcement actions of the labor commissioner.

"Legal action" means filing in a court of competent jurisdiction and subsequent activity pursuant to that filing.

"Wage claim form" means a document of the division that requests information pertinent to a wage claim that an employee submits to the division to commence investigation of the wage claim.

875—35.2(91A) Right of private action. Nothing in this chapter, including a determination that a claim is unenforceable, prejudices the right of an employee to pursue a wage claim by private action with or without the services of an attorney. If a claimant wishes to pursue a private action after assigning a wage claim to the commissioner, the claimant shall so notify the division in writing prior to commencing that private action.

875—35.3(91A) Filing a claim.

35.3(1) *Wage claim form.* A wage claim form shall be available upon request. An aggrieved employee shall supply such information as required by the commissioner to commence the investigation of a claim. The claimant shall certify by signature that such information is true to the best of the claimant's knowledge and belief. A claim for wages shall be made by submitting a complete wage claim form to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

35.3(2) *Assignment of claim.* By submitting a wage claim form to the division, a claimant assigns the claim to the commissioner contingent on the commissioner's determination that the claim is enforceable. A claimant may terminate the assignment by so notifying the division in writing. The commissioner may terminate the assignment upon a determination that the claim is not enforceable.

35.3(3) *Denial of claim.* The commissioner may deny claims within 14 days of receipt. Reasons for denying a claim without further investigation include, but are not limited to, the following:

a. The claim is received by the division more than one year after the date the wages became due and payable.

b. The claim must be heard in another forum or jurisdiction.

c. The claimant has begun a legal proceeding on the claim or has legal representation to pursue the claim.

d. The claim has been discharged in bankruptcy.

e. The claimant is not a resident of Iowa when submitting the claim to the division.

875—35.4(91A) Investigation.

35.4(1) *Receipt of wage claim form.* Upon receipt by the division of a completed and signed wage claim form from an aggrieved employee, the commissioner shall review the claim for wages and the allegations therein. The commissioner's review is not to be construed as a contested case as defined in Iowa Code chapter 17A.

35.4(2) *Employer notification of wage claim.* The commissioner shall notify the employer in writing of the allegations of the claimant and shall request a response from the employer within 14 days from the date of the letter. This period may be extended by the commissioner for good cause.

35.4(3) *Failure of employer to respond.* If the employer fails to answer the commissioner's request for response within the 14-day period, or as extended by the commissioner, the commissioner may determine the claim to be enforceable.

35.4(4) *Additional information from claimant.* If the employer answers the commissioner's request for response within the established time, the commissioner shall notify the claimant of the employer's response and afford the claimant an opportunity to present additional information in support of the claim for wages. The claimant shall submit the requested additional information within 14 days from the date of the letter. This period may be extended by the commissioner for good cause.

35.4(5) *Additional information from employer.* Upon receipt of the requested additional information from the employee, the commissioner may determine additional information is required from the employer.

35.4(6) *Determination of enforceability.* Upon receipt of sufficient information, the commissioner may determine the claim for wages to be enforceable and the commissioner shall notify the claimant and the employer of that determination.

35.4(7) *Determination of unenforceability.* The commissioner may, at any time, determine a claim to be unenforceable. Should the commissioner determine the claim is unenforceable, the commissioner shall so notify the claimant. Reasons for the commissioner to determine that a claim is unenforceable include, but are not limited to, the following:

a. Doubtful legal validity or complexity of the claim.

b. Doubtful ability to collect money from the employer.

c. The claim may require extensive discovery or involve protracted proceedings.

d. The potential value of the claim is such that the cost of the claimant's obtaining legal counsel for a private action would not be prohibitive.

e. The claimant is not responsive to the reasonable requests of the division, including, but not limited to, requests to provide information and to participate in a legal action.

f. The claimant fails to notify the division of an address change.

g. The inequity of the claim in the particular situation.

h. Another jurisdiction or forum is preferable for the claim.

i. A substantial probability that the claimant was not an employee.

j. The claim has been included in a bankruptcy estate.

35.4(8) *Settlement of claim.* The commissioner may settle a claim at any time with the consent of the claimant. Such consent may be included on the wage claim form.

875—35.5(91A) Legal action on wage claims.

35.5(1) *Settlement opportunity.* The commissioner shall, in writing, afford the employer an opportunity to tender settlement 14 days prior to commencing a legal action.

35.5(2) *Standard of conduct.* Upon commencing a legal action. the commissioner shall be bound by the standard of conduct required by the code of professional responsibility for lawyers.

35.5(3) *Counterclaims.* The commissioner shall not represent claimants on counterclaims or other legal actions brought by employers against claimants.

35.5(4) *Relief requested.* The commissioner may request liquidated damages, interest, attorneys' fees, and court costs in addition to wages due.

35.5(5) *Claimant participation.* The commissioner may require the claimant to attend hearings and otherwise assist in the legal action as a condition of the commissioner's enforcing the claim.

These rules are intended to implement Iowa Code chapter 91A and section 84A.2.

[Filed 7/1/83, Notice 5/11/83—published 7/20/83, effective 9/1/83]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 6/14/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed ARC 8395B (Notice ARC 8241B, IAB 10/21/09), IAB 12/16/09, effective 1/20/10]

CHAPTER 36
DISCRIMINATION AGAINST EMPLOYEES

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 36]

875—36.1(91A) Definitions.

"Commissioner" means the labor commissioner of the division of labor services or a designee.

"Division" means the division of labor services.

"Employee" means a natural person as defined in Iowa Code section 91A.2(3).

"Employer" means any person as defined in Iowa Code chapter 4, who in this state employs for wages a natural person.

875—36.2(91A) Employee rights. Employees are afforded a wide range of substantive and procedural rights under the Act. This chapter deals with the protection of employees. Iowa Code section 91A.10(5) prohibits the discharge of an employee or discriminatory actions against an employee for exercising rights under the Act.

875—36.3(91A) Purposes. This chapter describes the procedures, functions and interpretations established by the commissioner with respect to implementation and enforcement of Iowa Code section 91A.10(5).

875—36.4(91A) General requirements. Iowa Code section 91A.10(5) provides in general that an employer shall not discharge or in any manner discriminate against any employee because the employee has:

1. Filed any complaint under or related to the Act;
2. Assigned a claim to the commissioner;
3. Instituted or caused to be instituted any proceeding under or related to the Act;
4. Cooperated in bringing any action against an employer;
5. Exercised on the employee's behalf or on behalf of others any right afforded by the Act.

875—36.5(91A) Unprotected activities distinguished.

36.5(1) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibitions apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render the employee immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations.

36.5(2) However, to establish a violation, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. A violation exists if the protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in the protected activity. The issue as to whether a discharge or discrimination action was because of protected activity will be determined on the basis of the facts in each case.

875—36.6(91A) Complaint under or related to the Act.

36.6(1) Discharge or discriminatory actions to an employee because the employee has filed a complaint against an employer is prohibited. An example of a complaint would be where an employee filed a wage claim with the commissioner. However, this would not be the only type of action protected. The range of complaints related to the Act is commensurate with the Act's broad remedial purposes.

36.6(2) The statutory principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about wages with their employers. A complaint to the employer made in good faith would be related to the Act, and an employee would be protected against discharge or discrimination caused by the complaint to the employer.

875—36.7(91A) Proceedings under or related to the Act.

36.7(1) Discharge of or discrimination against any employee because the employee has brought an action under the Act, or has cooperated in bringing any action against an employer, is prohibited. An example of cooperating in bringing an action would be a situation in which an employee has testified or is about to testify in proceedings under or related to Iowa Code chapter 91A. Protection under the Act would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceeding, including inspections, investigations, or adjudicative functions.

36.7(2) Reserved.

875—36.8(91A) Filing of complaint for discrimination or discharge.

36.8(1) Any employee who believes that discrimination in violation of Iowa Code section 91A.10(5) has occurred, may, within 30 days after the violation occurs, lodge a complaint with the commissioner alleging the violation. No particular form is required. The commissioner shall cause an appropriate investigation to be made. If, as a result of the investigation, the commissioner determines that section 91A.10(5) has been violated, civil action may be instituted in any appropriate district court to restrain the violations and to obtain other appropriate relief, including rehiring or reinstatement of the employee to the former position with back pay.

36.8(2) Complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action, where the employee has within the 30-day period resorted in good faith to grievance, where the employee has filed a complaint regarding the same general subject with another agency, or where the employer's actions are of the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

875—36.9(91A) Withdrawal of complaints. Enforcement is not only a matter of protecting rights of employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the commissioner's investigation. The commissioner's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw the complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

875—36.10(91A) Arbitration or other agency proceedings.

36.10(1) An employee who files a complaint under Iowa Code section 91A.10(5) may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The commissioner's jurisdiction is independent of the jurisdiction of the other agencies or bodies. The commissioner may file an action in district court regardless of the pendency of other proceedings. However, the commissioner recognizes the policy favoring voluntary resolution of disputes under proceedings in collective bargaining agreements. Due deference is given to the jurisdictions of other forums established to resolve disputes which may also be related to the commissioner's jurisdiction. Where a complainant is pursuing other remedies, postponement of the commissioner's determination and deferral to the results of the other proceedings may be appropriate.

36.10(2) Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Iowa Code section 91A.10(5) and those proceedings are not likely to violate the rights guaranteed by section 91A.10(5). The factual issues in such proceedings must be substantially the same as those raised in the complaint to the commissioner, and the forum hearing the matter must have the power to determine the ultimate issues of discrimination. If the other actions initiated by a complainant are dismissed without adjudicatory hearing, such dismissal will not ordinarily be regarded as determinative of the complaint.

875—36.11(91A) Decision of the commissioner.

36.11(1) Upon receipt of all requested information, the commissioner may determine the employee's complaint alleging discharge or discrimination is enforceable, and the commissioner shall notify the employee of that determination.

36.11(2) Upon a determination that the employee's complaint alleging discharge or discrimination is enforceable, the commissioner shall notify the employer of that determination in writing and afford the employer an opportunity to tender settlement within 14 days of the writing prior to initiating judicial proceedings.

36.11(3) Upon a determination that the employee's complaint alleging discharge or discrimination is unenforceable, the commissioner shall notify the employee of that decision in writing. The employee shall have 14 days from the date of the written notification to appeal the decision to the commissioner. If the appeal is not made in writing within the 14-day period, then the employee loses the right to appeal the unenforceable decision.

These rules are intended to implement Iowa Code sections 84A.2 and 91A.10(5).

[Filed 8/9/85, Notice 2/27/85—published 8/28/85, effective 10/2/85]

[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]

CHAPTER 37
Reserved

CHAPTER 38
EMPLOYMENT AGENCY LICENSING

[Prior to 9/24/86, Employment Agency Licensing Commissioner[350] Chs 1 to 10]
[Prior to 10/21/98, see 347—Ch 38]

875—38.1(94A) Definitions.

"Agency" means employment agency.

"Commissioner" means the labor commissioner of the division of labor services of the department of workforce development or the commissioner's designee.

"Employee" means a person who seeks employment or who obtains employment through an employment agency.

"Employment agency" means a person who brings together those desiring to employ and those desiring employment and who receives a fee, privilege, or other consideration directly or indirectly from an employee for the service. "Employment agency" does not include a person who furnishes or procures theatrical, stage, or platform attractions or amusement enterprises.

875—38.2(94A) Application and license.

38.2(1) *Application.* An application for a license must be made in writing to the commissioner upon Form PEA-1(309-6164). The application form shall be accompanied by two copies of the employee-paid fee schedule Form PEA-2(309-6164); $75 nonrefundable fee; and all contract forms to be signed by an employee. The application shall also be accompanied by a surety company bond in the sum of $30,000, to be approved by the commissioner and conditioned to pay any damages that may accrue to any person due to a wrongful act or violation of law on the part of the applicant in the conduct of business.

38.2(2) *Name.* No agency shall use any name, symbol or abbreviation deceptively similar to or reasonably likely to be confused with the name used by an existing agency, any governmental unit, or nonprofit organization.

38.2(3) *Change in officers.* A change in the name of any person required to be reported on the application under Iowa Code Supplement chapter 94A shall be forwarded to the commissioner within ten days of the change.

38.2(4) *Change in address.* The agency shall notify the commissioner of any change of address prior to the change.

38.2(5) *Multiple locations.* A separate license shall be required for each separate office location operated by an agency.

38.2(6) *Nontransferable.* A license is nontransferable.

38.2(7) *Nonissuance of license.* Rescinded IAB 2/9/00, effective 2/9/00.

875—38.3(94A) Non-employment agency activity. The following activities do not require an employment agency license:

1. Appraisal of an employee's qualifications.
2. Development of career goals and marketing plans.
3. Preparation and printing of résumés.
4. Instruction on interview techniques and networking.
5. Counseling on negotiating pay and fringe benefits.
6. Assistance in obtaining employment when provided by schools, colleges, trade unions, and similar organizations for their students or members if any fees paid are for tuition, training, or dues and would be charged even if the student or member did not attempt to utilize the organization's employment search services.
7. Furnishing or procuring theatrical, stage, or platform attractions or amusement enterprises.
8. Any activity by a governmental unit.

875—38.4(94A) Complaints. Written complaints by an aggrieved party will be investigated. The commissioner will notify the aggrieved party in writing of the outcome of the investigation. The commissioner may take any appropriate action including denial, revocation, reprimand, and suspension.

875—38.5(17A,94A,252J) Denials, revocations, reprimands and suspensions.

38.5(1) The commissioner may deny, revoke, or suspend a license or issue a reprimand when the commissioner finds that any of the following conditions exist:

a. The license applicant has violated any of the provisions of Iowa Code Supplement chapter 94A or the rules of this chapter; or

b. The child support recovery unit of the department of human services has issued a certificate of noncompliance to an employment agency; or

c. The license application or its required attachments are inaccurate, incomplete or otherwise insufficient.

38.5(2) Contested cases shall be governed by Iowa Code chapter 17A and Iowa Administrative Code 875—Chapter 1, Division V.

875—38.6(94A) Permissible fees charged by agency.

38.6(1) The total amount charged to any employee in any form by an agency shall not exceed 15 percent of the employee's gross earnings from that employer for which the agency procured the job in any pay period for a period of time not to exceed the first 12 months from the date of employment.

38.6(2) Fees due the agency are payable as earned, however, the employee may knowingly agree to pay the fee in advance, with the full understanding that the employee is not required to do so, and the agency guarantees to refund any amounts in excess of 15 percent of actual gross earnings, when ascertained.

38.6(3) No agency or any person connected therewith shall require any employee to execute any negotiable instrument, assignment of earnings, or note except for that amount of fee which is past due to the agency.

38.6(4) Each agency shall keep conspicuously posted at its place of business a copy of the agency's schedule of fees on file with the commissioner. The schedules shall be printed in not less than 8-point type.

38.6(5) Employees who have paid the fee in advance must be notified at their last-known address by the agency at the time they make the final payment on the fee that they may have a refund due if they have paid more than 15 percent of the gross earnings of their first year of employment.

38.6(6) Rescinded IAB 2/9/00, effective 2/9/00.

875—38.7(94) Agency placement procedures. Rescinded IAB 2/9/00, effective 2/9/00.

875—38.8(94A) Contracts and fee schedules.

38.8(1) *Schedules furnished.* Any schedule of fees to be charged by an agency to employees shall be furnished to all employees at the time of making an application with the agency.

38.8(2) *Required content of all contracts.*

a. Contracts and fee schedules shall not contain smaller than 8-point type.

b. Contracts and fee schedules shall contain no ambiguous, false or misleading information.

c. All contracts and fee schedules must clearly state that the agency is licensed by the labor commissioner and that inquiries may be submitted to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, telephone (515)281-3606.

38.8(3) *Additional required content for employee-paid fee contracts.*

a. Each employee-paid fee contract shall contain a provision limiting to one year from the date of referral the period for which an agency may assess a placement fee for referral of that employee to that employer.

b. Where the agency provides the option for advance payment, the contract and employee-paid fee schedule must clearly state that the employee knowingly agrees to pay the fee in advance with the full understanding that the employee is not required to do so, and that the agency guarantees to refund any amount in excess of 15 percent of the employee's gross earnings from that employer for which the agency procured the job for a period of time not to exceed the first 12 months from the date of employment, when ascertained.

c. All employee-paid fee contracts and fee schedules must state the fee in dollar amounts as well as percentages.

38.8(4) *Additional required content for entertainment enterprises.* Rescinded IAB 2/9/00, effective 2/9/00.

[Editorial change: IAC Supplement 1/23/13]

875—38.9(94) Required records and report. Rescinded IAB 2/9/00, effective 2/9/00.

875—38.10(95) Forms. Rescinded IAB 2/9/00, effective 2/9/00.

These rules are intended to implement Iowa Code Supplement chapter 94A.

[Filed 3/9/78, Notice 11/30/77—published 4/5/78, effective 6/30/78]
[Filed 1/18/79, Notice 10/18/78—published 2/7/79, effective 3/19/79]
[Filed 3/18/82, Notice 10/28/81—published 4/14/82, effective 7/1/82]
[Filed 12/30/85, Notice 10/9/85—published 1/15/86, effective 2/19/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed emergency 8/30/88—published 9/21/88, effective 8/30/88]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed 10/26/89, Notice 9/6/89—published 11/15/89, effective 12/31/89]
[Filed emergency 6/8/90—published 6/27/90, effective 7/1/90]
[Filed emergency 1/21/00 after Notice 8/25/99—published 2/9/00, effective 2/9/00]
[Editorial change: IAC Supplement 1/23/13]

NOTE: For first four lines of history, see Employment Agency Licensing[350], Chapters 2, and 4 to 10.

RAILROADS

CHAPTERS 39 to 60
Reserved

AMUSEMENT PARKS AND RIDES

CHAPTER 61
ADMINISTRATION OF IOWA CODE CHAPTER 88A

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 61]

875—61.1(88A) Purpose, scope and definitions. These rules institute administrative and operational procedures for implementation of the Act.

61.1(1) *Definitions.* The definitions and interpretations contained in Iowa Code section 88A.1 shall be applicable to such terms when used in this chapter.

"Act" means Iowa Code chapter 88A.

"Amusement park" means a tract, structures, area and equipment, including electrical equipment used principally as a location for supporting amusement rides, amusement devices and concession booths.

"Major alteration" is a change in the type or capacity of an amusement ride or device or a change in the structure or mechanism that materially affects its function or operation. This includes but is not limited to changing its mode of transportation from nonwheeled to a truck or flat-bed mount, and changing its mode of assembly or other operational functions from manual to mechanical or hydraulic.

"Major breakdown" means a stoppage of operation from whatever cause resulting in damage, failure or breakage of a stress bearing part of a ride or device.

"Ride operator" is a person or persons causing the amusement ride or amusement device to go and stop or perform its entertaining function. A ride operator can be the operator's employee.

61.1(2) *Fees.*

a. *"Annual inspection fee"* is a fee instituted by the Act for the annual inspection.

b. *"Permit fee"* is an annual fee established by the Act for a permit to operate.

c. *"Reinspection fee"* is equal to the fee established by the Act for an annual inspection.

61.1(3) *Inspections.*

a. *"Annual inspection"* is the official inspection of a ride or device made by the commissioner or authorized representative.

b. *"Reinspection"* is an inspection, other than the annual inspection made during the year, of a ride or device as a result of a major breakdown, major alteration, or for any cause which may be deemed necessary by the commissioner.

[**ARC 8395B**, IAB 12/16/09, effective 1/20/10]

875—61.2(88A) Administration.

61.2(1) *Authorization.* Commissioner or representative, upon presenting credentials to the operator, is authorized:

a. To enter without delay and at reasonable times any establishment, assembly area or other area where amusement rides, amusement devices and concession booths are stored, being assembled, are in use, being manufactured or being modified.

b. To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and within a reasonable manner, any such place of amusement, and to question privately any operator or employee.

61.2(2) *Application for permit to operate.* Before operation each year the operator of a ride or device shall apply to the commissioner for a permit to operate amusement rides, amusement devices or concession booths in this state for the forthcoming year as prescribed in the Act. The application shall be made upon forms to be furnished by the commissioner. The application shall be accompanied by the permit fee as set by statute and a certificate of insurance indicating that the owner has obtained insurance in the amount conforming to Iowa Code section 88A.9. As early as possible before operation each year, the owner shall submit to the commissioner a notice of the owner's routing schedule, identifying the rides, devices and booths to be operated and the dates and locations where they will be used. Notice of cancellation of location dates, previously unscheduled dates or emergency dates shall be forwarded to the commissioner immediately by telephone or other means of immediate communication

and confirmed in writing. Upon receipt of the application for permit and notice of routing schedule, an inspector will be assigned to make the required annual inspection. When an emergency booking makes the first of May application impossible, the owner shall notify the commissioner of the booking by telephone or other means of immediate communication and confirm this notice in writing. The commissioner may schedule and arrange for inspection of the rides and devices and the issuance of a permit to operate as will best serve the needs of the public, owner and the orderly administration of the Act and these rules.

61.2(3) *Annual inspection and permit to operate.* No person shall operate an amusement ride, amusement device or concession booth unless it has been inspected and a permit to operate has been issued. All permits to operate expire on December 31 of the year issued.

a. An amusement ride, amusement device or concession booth operating in this state shall be subjected to a thorough inspection and tests as required by the Act. The scope of these tests and inspections and the manner and method of their execution shall be established by the commissioner. To confirm that a ride, device or booth conforms to these rules, the results of an inspection will be recorded by the inspector upon forms furnished by, and filed with, the commissioner.

b. Upon receipt of the inspection fee(s) as set by statute, inspection forms and certification that the ride, device or booth met the safety standards, the commissioner shall issue a permit to operate the ride, device or booth which has been inspected. The fee and inspection are on a per ride, device or booth basis.

c. No person shall operate a new ride, device or booth which has undergone major alteration until it has been inspected.

d. After a ride, booth, or device has passed inspection, the commissioner shall issue an identification symbol which shall be affixed to a basic part of the ride, device or booth in such a manner as to be readily accessible to the inspector. If a ride, device or booth is rebuilt or has undergone major alteration it shall be reinspected, upon passing inspection, a new identification symbol will be issued. If a ride or device is sold or undergoes major alteration, the symbol shall be obliterated. If an identification symbol is mutilated so that it is no longer legible, the operator shall notify the commissioner and a replacement shall be issued.

61.2(4) *Revocation of permit to operate.* The commissioner may suspend or revoke the permit to operate of an operator for gross negligence, repeated disregard of daily inspection standards, misrepresentation of material information required as a part of the application for permit to operate, failure to comply with a safety order issued by the commissioner or authorized representative, conduct in the operation of a carnival or an amusement park in derogation or disregard of public safety and welfare, lapsing of the required insurance coverage, or failure to pay fees that are required under the provisions of the Act and these rules.

61.2(5) *Daily inspections.* The amusement rides, amusement devices and concession booths shall be inspected on each day they are intended to be used. This inspection shall be made by an operator. Results of these daily inspections shall be recorded in the manner prescribed by or on forms provided by the division and certified by an operator. The record of daily inspections shall be kept on file by the operator and made available upon request by the commissioner. An operator shall not knowingly use, or permit to be used, a ride or device which is not properly assembled or which is defective or unsafe in any of its parts, controls or safety equipment.

61.2(6) *Personal injuries and deaths.* An operator shall report in writing to the commissioner an accident resulting in injury to any person within 48 hours after occurrence of the incident. The report of an accident shall be a duplicate copy of the report submitted to insurance companies. The operator shall immediately report by telephone any accident in which a fatality occurs or a person suffers a fracture, concussion, laceration or other traumatic injury requiring immediate surgical or medical care. The commissioner, after consultation with the operator and determination, may require that the scene of such an accident be secured and not disturbed to any greater extent than necessary for removal of the deceased or injured persons. If a ride is removed from service by the commissioner, the commissioner shall order an immediate investigation and the ride or device shall be released for repair and operation only after complete investigation.

61.2(7) *Mechanical failure reports.* The operator shall immediately report to the commissioner a major breakdown after occurrence of the incident by telephone or other media of immediate communication. The operator shall confirm this report in writing within 48 hours on the form provided by the division. Upon being advised of such an incident, the commissioner or authorized agent, after reviewing the circumstances, may order the ride or device to be withheld from operation, and in such cases the commissioner shall conduct an immediate investigation. The ride or device shall be released for repair and operation only after the complete investigation by the commissioner.

61.2(8) *Safety order.* If an inspector finds a condition on the equipment which does not comply with the rules, the inspector will issue a safety order requiring that the condition be corrected within a time limit. This time limit will be established at the time of the inspection by agreement between the commissioner and the operator. Although a time limit may be established for the completion of the work required under the safety order, this work should be done as quickly as possible. As soon as the work is finished the safety order shall be signed and mailed to the commissioner. If the order is not returned within the established time limit or the commissioner is not informed of the reason why the time limit cannot be met, an inspector will be assigned to investigate the situation and take steps necessary to enforce compliance with the order. If a carnival amusement unit should leave the state before complying with the order and the certification of compliance is not mailed, a permit to operate in a subsequent season shall not be issued until it is determined that all provisions of previous orders have been completed. Failure to comply with a safety order may result in revocation of the operator's permit to operate in the state or prosecution for violation of the Act. In a situation where an inspector discovers a condition which is a direct and immediate severe hazard to health or a direct and immediate danger to life, an inspector shall issue a safety order to stop the operation of an amusement ride, amusement device or concession booth immediately. The inspector shall notify the commissioner of the action taken, and the operator shall eliminate the cause of hazard prior to restarting the operation. In the case where a safety order to stop is justified by an associated mechanical failure report submitted by a separate operator, the commissioner shall make an emergency inspection or issue a recommended mechanical repair as soon as possible.

61.2(9) *Receipt and disbursement.* Revenue from permits, annual inspections, reinspections or for any other services or requirements prescribed by the Act or the rules shall be paid to the division. Checks for these fees shall be made payable to Division of Labor Services and mailed to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

875—61.3(88A) Exemptions. Pursuant to Iowa Code sections 88A.11(3) and 88A.11(4), kiddie rides and amusement devices such as, but not limited to, model horse and model rocket rides, pinball machines and jukeboxes, that have individual self-contained wiring installed by the manufacturer, that operate on less than 120 volts, are designed to be coin activated, are located in or attached to permanent buildings and are self-operated are exempt from these rules except for the provision of special inspections by the commissioner when conditions warrant it. Nonmechanized playground equipment including, but not limited to, swings, seesaws, stationary spring-mounted animal lines, swinging gates and physical fitness devices owned, maintained and operated by any political subdivision of this state are exempt from these rules.

These rules are intended to implement Iowa Code chapter 88A.

[Filed 2/21/73, amended 12/20/73, 4/8/75, 6/19/75]
[Filed 3/5/76, Notice 1/26/76—published 3/22/76, effective 4/30/76]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 8/30/88—published 9/21/88, effective 8/30/88]
[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]
[Filed 4/16/07, Notice 2/28/07—published 5/9/07, effective 6/13/07]
[Filed ARC 8395B (Notice ARC 8241B, IAB 10/21/09), IAB 12/16/09, effective 1/20/10]

CHAPTER 62
SAFETY RULES FOR AMUSEMENT RIDES, AMUSEMENT DEVICES, AND CONCESSION BOOTHS

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 62]

875—62.1(88A) Purpose, scope and definitions. These rules establish minimum safety standards for the installation, repair, maintenance, use, operation and inspection of amusement parks, amusement rides and concession booths.

62.1(1) *Definitions.* The definitions and interpretations contained in Iowa Code section 88A.1 shall be applicable to such terms when used in this chapter.

"Act" means the Iowa amusement park and ride safety inspection and regulation Act of 1972 (Iowa Code chapter 88A).

"Amusement park" means a tract, structures, area and equipment, including electrical equipment used principally as a location for supporting amusement rides, amusement devices and concession booths.

"Average adult passenger" means, for purposes of design, a person weighing 170 pounds.

"Average child passenger" means, for purposes of design, a child weighing 75 pounds.

"Containing device" is a strap, belt, bar, gate or other safety device designed to prevent accidental or inadvertent dislodgement of a passenger from a ride or device but which does not actually provide physical support.

"Factor of safety" or *"safety factor"* means the ratio of the ultimate or breaking strength of a member or piece of material to the actual working stress or to the maximum permissible or safe load stress when in use.

"Load design" or *"design load"* means the load established by the design engineer or the commissioner for normal operation plus acceptable factors of safety. A device shall be designed to withstand static, dynamic, shock and wind loads.

"Major alteration" is a change in the type or capacity of an amusement ride or device or a change in the structure or mechanism that materially affects its function or operation. This includes but is not limited to changing its mode of transportation from nonwheeled to a truck or flat-bed mount, and changing its mode of assembly or other operational functions from manual to mechanical or hydraulic.

"Major breakdown" means a stoppage of operation from whatever cause resulting in damage, failure or breakage of a stress bearing part of a ride or device.

"Rated capacity" is a capacity established by the design engineer for the normal loading and operation of a ride or device, or in absence thereof, as established by the commissioner after inspection and determination.

"Restraining device" is a safety belt, harness chain, bar or other mechanism designed and utilized for physical support, retention or restraint to the passenger of a ride or device.

"Ride operator" is a person or persons causing the amusement ride or amusement device to go and stop or perform its entertaining function. A ride operator can be the operator's employee.

"Rope," "wire rope" and *"cable"* are interchangeable terms except where the term "fiber rope" is used.

"Safety retainer" is a secondary safety cable, bar, chain, attachment or other device designed to prevent parts of a ride or device from becoming disengaged from the main mechanism or from tipping or tilting in a manner to cause injury to persons riding on or in the vicinity of a ride or device.

62.1(2) *Specific classes of amusement rides.*

a. *"Major ride"* is a device designed to carry a specific maximum number of passengers, adults or children, either by power or gravity in cars or other suitable fixtures for conveying persons.

b. *"Kiddie ride"* is a device designed primarily for use by children but which may accommodate adults.

c. *"New ride"* means a ride or device for which a permit has not been issued by the commissioner for operation in the state, a newly purchased ride, a ride or device that has undergone major alteration, or any other ride or device upon change of title or ownership.

62.1(3) *Inspections.*

a. *"Annual inspection"* is the official inspection of a ride or device made by the commissioner or authorized representative.

b. *"Reinspection"* is an inspection, other than the annual inspection made during the year, of a ride or device as a result of a major breakdown, major alteration, or for any cause which may be deemed necessary by the commissioner.

875—62.2(88A) Design criteria. Structural materials and construction of rides and devices shall conform to recognized engineering practices, procedures, standards and specifications. The design, materials and construction features shall incorporate safety factors acceptable to the commissioner.

62.2(1) *Manufacturers' analyses.* Before a new amusement ride or amusement device is put into operation for the public's use, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any ride or device, the operator shall file with the commissioner a notice of the operator's intention and shall furnish design data, safety factors, materials utilized, stress analysis and other pertinent data deemed necessary by the commissioner. This information shall also be furnished by an operator for existing rides and devices if required by the commissioner. Stress analysis and other data pertinent to the design, structure, factors of safety or performance characteristics shall be in accordance with accepted engineering practices, acceptable to the commissioner and written in English. Data may be requested for, but not limited to, the following materials, parts or components of rides or devices: Structural materials, including bars, cables, chains, ropes, rods, tubing, pipes, girders, braces, fittings, fasteners, trusses, pressure vessels, pressure piping, gears, clutches, speed reducers, welds, bearings, couplings; carriers, such as tubs, cars, chairs, gondolas or seating and carrying apparatus of any description; axles; hangars; pivots; safety bars, belts, harnesses, chains, gates or other restraining, containing or retaining devices. Data shall be furnished at the request of the commissioner concerning forces generated by acceleration or deceleration, centrifugal action, inertia or other forces either constant, reversible or eccentric.

62.2(2) *Rating.* Manufacturers shall identify the capacity of an amusement ride or amusement device in terms of number of passengers and operating speed. This information may be included on the division's identification symbol.

62.2(3) *Seating and carrying devices.* Tubs, cars, chairs, seats, gondolas and other carriers used on rides or devices shall be designed and constructed as strong as practical. Their interior and exterior parts with which passengers may come in contact shall be smooth, rounded, free from sharp, rough or splintered edges or corners, and with no protruding screws or projections which might cause injury. Parts upon or against which passengers might be thrown by action of the ride shall be adequately padded to prevent or minimize the possibility of injury. Propellers or other moving parts or decorations attached to tubs, cars, chairs, seats, gondolas and other carriers shall be securely fastened to such equipment and keyed or otherwise secured so that they cannot come off during operation of the ride. Vanes, canopies or other attachments which might become disengaged shall be secured with safety straps to prevent their flying away in case of breakage or dislocation.

62.2(4) *Speed limiting.* An amusement ride or amusement device capable of exceeding its maximum safe operating speed shall be provided with a maximum speed-limiting device. Steam engines that require an overspeed throttle setting to initiate the operation are exempted.

62.2(5) *Brakes and stops.* On a ride or device where coasting renders the operation dangerous, either during the period while the ride or device is being loaded or unloaded or in case of power failure or other unforeseeable situation, a method of braking shall be provided. Where rollback may cause injury, anti-rollback devices shall be provided.

62.2(6) *Retaining, restraining and containing safety devices.*

a. *Retaining safety devices.* Tubs, cars, chairs, seats, gondolas or other carriers on a ride that depend upon a single means of attachment or support shall be equipped with safety retainers to prevent

a carrier, if it becomes disengaged from its support or attachment, from being catapulted from the ride and to prevent any action of the carrier which might throw the occupants from the carrier. This rule only applies to rides, a ride design or situations determined to be hazardous by the commissioner.

b. Restraining and containing safety devices. Restraining devices used on tubs, cars, chairs, seats, gondolas or other carriers on a ride wherein the forces generated by the action of the ride require retention, restraint or actual physical support of the passenger shall be designed, constructed and installed to withstand impact and forces of a minimum of 850 pounds per passenger. On a ride or a ride design where, after inspection by the commissioner, it is deemed necessary to install safety devices to prevent accidental or inadvertent dislodgement of a passenger from any tub, car, chair, seat, gondola or other carrier, a containing device shall be installed to withstand the design loads.

62.2(7) *Motors, motor circuits and controllers.* Motors, motor circuits and controllers shall be manufactured, constructed and utilized in accordance with Article 430, National Electric Code, NFPA 70-1975. Any motor operating with greater than 50 volts shall have its frame grounded with a conductor which is connected to the service equipment grounding circuit.

62.2(8) *Safety stop circuits.* Electrical safety stop circuits shall be closed circuits so that in case of power failure or malfunction of any element the system will cause the ride or device to which the circuit pertains to fail safe. Circuits shall be all metallic and ungrounded unless otherwise approved by the commissioner. After actuation of a safety stop, the cause shall be determined and the situation corrected before operation of the ride or device is resumed. Safety stop circuits shall not be bypassed during operation.

62.2(9) *Master switch.* Each electrically operated amusement device shall be provided with a fused disconnect switch or circuit breaker placed within unobstructed reach of the ride operator. This subrule shall not apply to blowers for inflatable rides or to devices designed to be controlled directly by the public.

62.2(10) *Chains.* Chains with certified load carrying capacities may be utilized for safety devices or in stress bearing applications. Twisted wire or stamped chain shall not be used.

62.2(11) *Lock out.* A means shall be provided for locking out or securing rides or equipment for maintenance, repair or inspection. This can be a padlock latch on the master switch.

62.2(12) *Rebuilt or modified ride or device.* An amusement ride or device that is being considered for a major alteration shall be treated as a new ride subject to 62.2(1) to 62.2(11). The altered ride or device shall require an inspection prior to operation.

62.2(13) *Bungee jumping activities.* Bungee jumping activities shall be conducted pursuant to "1992 NABA Guidelines" as published by the North American Bungee Association and occupational safety and health rules adopted at 875—Chapter 10, "General Industry Safety and Health Rules," and 875—Chapter 26, "Construction Safety and Health Rules." If a conflict exists between the rules of the association and OSHA, the OSHA rules shall apply. Variances from the OSHA rules may be requested.

875—62.3(88A) Concession booth requirements.

62.3(1) *General.* Concession booths shall be designed so that bracing rods and the tie down ropes are not projecting in front of booth where the public can trip, stumble or run into the braces or ropes. All front openings and awnings shall be designed with safety latching or safety pin devices that prevent the wind or crowds from forcing rings over pins, braces off from supporting studs or any other type of supporting device off its temporary structural mount. The concession booths shall be constructed to meet the requirements of standard for Tents, Grandstands, Air-Supported Structures Used for Places of Assembly, NFPA No. 102-1972, Section 5, Tents, Paragraph 52, Structural Requirements. Armrests and seating devices shall be designed with adequate strength, smooth and round edges. No sharp material that can cut, puncture or scrape shall be utilized.

62.3(2) *Hazardous.* Concession booths shall not utilize normal hunting or other high-powered rifles or ammunition in shooting galleries. Specific gallery shooting or propelling devices that utilize shells and pellets shall use a nonspattering soft nonricocheting bullet or shot designed and made for shooting galleries. Ricocheting into the public shall be avoided by side reflecting absorbent wings or panels. Ricocheting out the back of the concession booth shall be prevented by adequate absorbing

walls and sandbagging or other types of banking along the bottom, rear and side edges of booths. The framework reflecting semihazardous devices, such as handballs and handdarts, shall be constructed to prevent ricocheting or a direct passage through the booth to the public.

875—62.4(88A) Walking surfaces, access and egress.

62.4(1) *General requirements.* Safe and adequate means of access to and egress from amusement rides, devices, concession booths, permanent structures and temporary structures shall be provided. The design, number, location and identification of exits shall be in accordance with the Standard for Tents, Grandstands and Air-Supported Structures Used for Places of Assembly, NFPA No. 102-1972, Section 7, Ways of Egress. All passageways are to be kept free from debris, obstructions, projections and other hazards. All surfaces shall be such as to prevent slipping and tripping, and floors shall be kept free of protruding nails, splinters, holes or loose boards. Where mechanical handling equipment is used, sufficient safe clearances shall be allowed for passageways.

62.4(2) *Stairways, landings and ramps.* Adequate stairways or ramps and the necessary landings and platforms shall be provided where people enter or leave a device, ride or structure that is above or below grade or floor level at entrance to or exit from such amusement. The design and construction of stairways, ramps and railings shall conform to 29 CFR, Chapter XVII, Part 1910 subpart D—Walking—Working surfaces as published at 39 Federal Register 23505 (June 27, 1974) except for the requirement of placement of stairway railings and guards. All stairs with more than one step shall have standard handrails or railings on both sides regardless of width, and when stairways are 88 inches or greater in width, a railing shall be placed approximately in the center. The construction of the standard railings and handrails shall be in accordance with the Federal Register cited in this subrule.

875—62.5 and **62.6** Reserved.

875—62.7(88A) Signal systems. Signal systems shall be provided and utilized for controlling, starting and stopping of a ride or device when the operator of the ride or device does not have a clear view of the point where passengers are loaded or unloaded. Where the need for coded signals is required, the code of signals adopted for operation of the ride or device shall be printed and kept posted at both the operator's station and the location from which the signals are given. Persons who use the signals shall be instructed in their use and shall be trained to understand thoroughly their operation and meaning. Signal systems shall be tested on each day prior to operation of the ride or device. A ride or device requiring a signal system shall not be operated if the system is not performing correctly.

875—62.8(88A) Hazardous materials. The owner shall store and handle liquid petroleum gases and flammable liquids utilized either as fuel for internal combustion engines, for heat or for illumination in accordance with 29 CFR, Chapter XVII, Part 1910 subpart H—Hazardous Materials (Paragraphs 1910.106—Flammable and Combustible Liquids and 1910.110—Storage and Handling of Liquified Petroleum Gases as published at 39 Federal Register 23608 (June 27, 1974). Bulk storage (quantities above 50 gallons) shall not be permitted in any area accessible to the public.

875—62.9 Reserved.

875—62.10(88A) General environment.

62.10(1) *Weather and riot.* During a lightning storm, high wind storm, a period of tornado warning, severe storm warning, fire, or when violence, riot or civil disturbance occurs or threatens in or is a direct threat to an amusement park or a carnival lot, passengers shall be unloaded or evacuated from a ride or device and the ride or device shut down and secured immediately. Operation shall not resume until the situation has returned to a normal safe operating condition.

62.10(2) *Illumination.* Access and exits to and from amusement rides and devices and temporary or permanent structures shall be provided with illumination by natural or artificial means of no less than 5 foot-candles measured at grade level. No less than 10 foot-candles of illumination shall be provided at all work levels for assembly and disassembly of amusement rides and devices and temporary structures.

875—62.11(88A) Medical and first aid. The operator shall ensure the availability of medical personnel. In the absence of an infirmary, clinic or hospital in the proximity to the carnival or amusement park which is available for the treatment of injured public, a person or persons who have a valid certificate in first-aid training from the U. S. Bureau of Mines or the American Red Cross shall be available to render first aid. First-aid supplies recommended by a consulting physician shall be easily accessible when required. The first-aid kit shall consist of materials recommended by the consulting physician in a weatherproof container with individual sealed packages for each type of item. The contents of the first-aid kit shall be checked by the operator at each location stand or at least weekly at amusement parks to ensure that expended items are replaced. The operator shall ensure that telephone numbers for doctor, hospital and ambulance service are conspicuously posted.

875—62.12(88A) Fire protection.

62.12(1) *Fire extinguishers.* The operator shall provide adequate or ensure that adequate fire protection equipment is available within and surrounding the temporary structures that are part of the show. The agent or agency responsible for the permanent structures shall provide or ensure adequate fire protection equipment exists or is available for the permanent structure. The selection, placement and maintenance of fire extinguishers shall be in accordance with Standard for the Installation of Portable Fire Extinguishers, NFPA Number 10-1974.

62.12(2) *Flammable waste and materials.* An operator shall provide identified covered metal containers for flammable waste such as oily rags and other flammable materials which shall be kept in easily accessible locations. Such containers shall be located so that they will not obstruct means of ingress or egress or aisles.

62.12(3) *Flame resistance.* All tents occupied for assembly, or those located within that portion of the premises used by the public and all tents in places of assembly in or about which any devices using fuel are operated, and all tarpaulins and decorative materials used in connection with any of these, shall meet the appropriate requirements for resistance to fire prescribed in the Standard for Flame-Resistant Textiles and Films, NFPA Number 701-1969. Safety nets shall be exempt from the above requirements for resistance to fire. The owner shall have a certificate or a test report from an approved testing agency or engineer indicating fire resistance rating is equal to or better than the above standard.

62.12(4) *Alarm.* The operator shall ensure that the telephone number for the local fire department is conspicuously posted.

875—62.13(88A) Compressed gas and air equipment. Air and gas compressors, tanks, piping and equipment shall be constructed and maintained to ensure safe operation at all times. The equipment shall have safety relief devices and be inspected in accordance with 29 CFR, Chapter XVII, Part 1910 subpart M—Compressed Gas and Compressed Air Equipment as published at 39 Federal Register 23687 (June 27, 1974). Equipment shall be inspected at least once a year. A record of each inspection shall be kept by the owner where the equipment is used and shall be made available on request by the commissioner.

875—62.14 Reserved.

875—62.15(88A) Machinery and machine guarding.

62.15(1) *General requirements.* One or more methods of machine guarding shall be provided to protect the public from injury. An example of double guarding is public barriers and gear shielding. Guards shall be fixed to the machine where possible and secured elsewhere if for any reason attachment to the machine is not possible. The guard or barrier shall be such that it does not offer an accident hazard in itself. Barriers shall be securely staked or sandbagged to prevent movement or tipover by the public falling, pressing or stumbling against them. The barriers shall be located to keep the public at least 6 feet away from the ride. Ride entrances shall have a passenger waiting line retaining chain, bar, gate or device. All machinery designed for a fixed location shall be securely anchored to prevent walking or moving. All rides containing or having a mounting or mountings that would catch, wind up or entangle long hair shall have attached adequate guards.

62.15(2) *Mechanical power transmission.* All power transmission devices and associated moving parts shall be shielded, enclosed or barricaded to protect the public in accordance with 29 CFR, Chapter XVII, Part 1910 subpart O—Machinery and Machine Guarding, Paragraph 1910.219—Mechanical Power Transmission Apparatus as published at 39 Federal Register 23728 (June 27, 1974).

875—62.16 Reserved.

875—62.17(88A) Welding, cutting and brazing. No welding, cutting or brazing shall be accomplished where the public can directly observe the process or be hit by sparks or flying materials generated by the process. Any welding, cutting and brazing accomplished when the general public is in attendance shall be accomplished behind temporary erected solid barriers. The ends of these shall be overlapped to prevent any direct exposure. If the operation cannot be shielded, the operator shall provide a means of keeping the public away from the point of work for a distance of 35 feet for all soldering, brazing, cutting, and gas welding up to ½ inch, 50 feet for all gas welding over ½ inch and 150 feet for all arc welding utilizing electrodes up to 3/16-inch diameter. All larger arc welding operations shall be accomplished behind solid shielding or prior to or after public attendance hours. All compressed gas, compressed gas cylinders, electrical equipment and other apparatus associated with welding, cutting and brazing shall be stored, handled and meet requirements in accordance with 29 CFR, Chapter XIII, Part 1926 subpart J—Welding and Cutting as published at 39 Federal Register 22828 (June 24, 1974).

875—62.18(88A) Operations.

62.18(1) *Location.* The general layouts shall be established such that continuous traffic patterns will exist. Box canyons formed by rides, devices and concession booths shall be avoided. The egress of a ride, device or booth shall not be located immediately in front of hazardous equipment. The layouts shall be such to prevent traffic patterns through the concession booth backyards and shall minimize traffic over any water lines and electrical lines. The intermingling of water lines and electrical lines shall be avoided. Long guy wires or narrow braces utilized for ride, device or booth support shall be clearly marked with streamers or other devices to attract attention when located in traffic patterns.

a. *Temporary ride.* A ride shall be placed on solid footings, be secured to prevent shifting, tipping, swaying or erratic motion. No cement, brick or similar type blocks shall be permitted. The provision pertinent to erratic motion or sway does not apply to a ride designed to permit flotation characteristics or flexibility. Use of shim blocks shall be kept to a minimum. Depressions in the ground near the ride footings shall be filled and tamped and adequate means of drainage provided to prevent water from collecting and softening supporting areas in case of rain. The area surrounding the ride shall be clear and kept free from trash and tripping hazards. A daily inspection of the ride motion and footings shall be made.

b. *Permanent ride.* A ride permanently erected in an amusement park shall be set on properly designed and constructed foundations or footings and secured to these footings in a manner to prevent shifting, tipping, swaying or erratic motion. Cement, brick or similar type blocks shall not be permitted. The provision pertinent to erratic motion or sway does not apply to a ride designed to permit flotation characteristics or flexibility. Use of wood shim blocks shall be kept to a minimum.

c. *Public protection.* Temporary booths shall not be located under aerial amusement devices. Temporary booths utilized for cooking food shall be located such that at least 10 feet of clearance exists on two sides for the use of fire equipment or other emergency vehicles, and shall not be located within 10 feet of amusement rides. A minimum clearance of 6 feet shall exist between an exterior ride and walls, building and other structures. At least 12 feet of clearance shall be maintained between rides.

Except where electrical distribution and transmission lines have been de-energized and visibly grounded at point of work, operation or where insulating barriers, not a part of or attachment to the equipment, ride structure or machinery, have been erected to prevent physical contact with the lines, equipment, ride or machines shall be operated proximate to power lines only in accordance with the following:

(1) For lines rated 50 kv or below, minimum clearance between the lines and any part of a lifting crane, ride structure or equipment shall be 10 feet.

(2) For lines rated over 50 kv, minimum clearance between the lines and the lifting crane, ride, structure or equipment shall be 10 feet plus 0.4 inches for each 1 kv over 50 kv.

(3) During assembly or disassembly a person shall be designated to observe clearance of the equipment and give timely warning for all maneuvers where it is difficult to maintain the desired clearance by visual means.

The operator shall ensure that there exists in the immediate vicinity a device or devices (for example, ladder, fire truck or hydraulic chair lift) which are available for emergency removal of passengers from elevated amusement rides or amusement devices that will not operate.

62.18(2) *Leveling and alignment.* Corner posts, central columns or support structures of a ride designed to operate on a perpendicular axis shall be plumb and secured so that the path of the sweeps or platforms shall be level and operate on a true horizontal plane at right angles to the axis of the pivot. A ride whose carriers are designed to operate on a horizontal axis shall be leveled so that the carriers will orbit in a true perpendicular plane. The base of a ride employing a combination of orbiting planes or a ride whose carriers operate normally in a plane other than true horizontal or vertical shall be leveled and plumbed and secured so that they will not tip or shift and will be stable under the most adverse operating conditions, except for a ride designed to permit flotation characteristics or flexibility or designed to operate properly whether the base is plumb or level or not.

62.18(3) *Ride operators.* A ride or device shall be operated by a competent ride operator trained for the duty. The ride operator of a kiddie ride or device designed for the exclusive use of children shall be at least 16 years of age. For all other major rides or devices an operator shall be at least 18 years of age. A ride operator shall have knowledge of the use and function of all normal operating controls, signal systems and safety devices applicable to the ride or device and of the proper use, function, capacity and speed of the particular ride or device which the operator is operating. A ride operator shall have complete control of the ride or device at all times that it is being operated for the public's use. When the ride or device is shut down provision shall be made to prevent operation by the public. No person other than a trained ride operator shall be permitted to handle the controls of a ride or device during normal operation except where it is designed to be controlled by the passenger.

62.18(4) *Overspeeding and overloading.* A ride or device shall not be loaded beyond its rated capacity nor shall it be operated at an unsafe speed or at any speed other than that prescribed by the design engineer or manufacturer. When this information is not obtainable, the criteria for safe operating speeds and rated capacity will be established by the commissioner.

62.18(5) *Internal combustion power sources.* Fuel tanks for internal combustion power sources should be of adequate capacity to permit uninterrupted operation during normal operating hours. Where it is impossible to provide tanks of proper capacity for a complete day, the ride or device shall be shut down and unloaded or evacuated during the refueling procedure. The fuel supply shall not be replenished while the engines are running. An enclosed area in which an internal combustion engine is operated shall be ventilated. Exhaust fumes from the engine shall be discharged outside the area. Internal combustion power sources shall be located in a manner and shall be protected either by guards, fencing or enclosure to prevent public exposure to hazard and to secure the equipment from the public.

62.18(6) *Maintenance.*

a. General. All equipment relative to amusement rides, amusement devices and concession booths shall be given periodic maintenance service. This shall include properly lubricating and cleaning machinery, engines and motors. Worn mechanical parts, padding material and cushioning shall be replaced and kept in a safe condition, and machinery shall be periodically inspected for loose fasteners. Lockout devices shall be engaged prior to inspecting or servicing a piece of equipment. The upholstery shall be examined, and no loose or flapping portions of upholstery or decoration shall be permitted. Equipment and structure for amusement rides, amusement devices and concession booths shall be kept free from protruding nails, loose nails, splintered wood, loose and wobbly seats and rough, loose or dangerous armrests.

b. Wire rope.

(1) Wire rope shall be thoroughly examined. Wire rope found to be damaged shall be replaced with new rope of proper design and capacity. Any of the following conditions shall be cause for rope replacement:

In running ropes, six randomly distributed broken wires in one rope lay, or three broken wires in one strand in one rope lay. A rope lay is the length along the rope in which one strand makes a complete revolution around the rope.

In pendants or standing ropes, (ropes bearing the entire load and subjected to constant pressure and surge shocks) evidence of more than one broken wire in one rope lay.

Abrasion, scrubbing or peening causing loss of more than one-third of the original diameter of the outside wires.

Severe corrosion.

Severe kinking, severe crushing, or other damage resulting in distortion of the rope structure.

Heat damage resulting from a torch or arc caused by contact with electrical wires.

Reduction from normal diameter of more than 3/64 inch for diameters up to and including ¾ inch; 1/16 inch for diameters 7/8 inch to 1-1/8 inches; 3/32 inch for diameters 1¼ inches to 1½ inches. Marked reduction in diameter indicates deterioration of the core resulting in lack of proper support for the load carrying strands.

Bird caging or other distortion resulting in some members of the rope structure carrying more load than others.

Noticeable rusting or development of broken wires in the vicinity of attachments. If this condition is localized in an operating rope, the section in question can be eliminated by making a new attachment. This may be done rather than replacing the entire rope.

(2) Wire ropes used to support, suspend, bear or control forces and weights involved in the movement and utilization of tubs, cars, chairs, seats, gondolas, other carriers, the sweeps or other supporting members of a ride or device shall not be lengthened or repaired by splicing.

(3) Couplings, sockets and fittings shall be of a design and type approved by the commissioner and installed in accordance with the instructions or specifications of the designer, engineer or manufacturer.

c. Wood components. Footings, splices, uprights, track timbers, ledgers, sills, laps, bracing, flooring and all other wood components of rides, devices and structures shall be inspected for deterioration, cracks or fractures. Emphasis shall be given to ensuring tight nails, bolts, lag bolts and other fasteners. A minimum of 18 inches of soil, with respect to grade, shall be removed around piling or wood members embedded in dirt for support to check deterioration. When wood piling requires replacement, ground level concrete piers shall be used. Wood members found to be defective shall be replaced with material of equal or greater strength and capacity. Repairs and replacements to fixed roller coasters shall be made in accordance with the recommendations of the manufacturer.

d. Housekeeping. An adequate number of containers for refuse shall be provided in and around all amusement rides and devices, permanent structures and temporary structures. Excessive accumulations of trash and refuse shall be promptly removed. All parts of amusement rides and devices, temporary structures and permanent structures used by the public shall be maintained in a clean condition. All walkways between amusement rides and devices shall be kept free from debris, obstructions or other hazards.

e. Electric motors. Electric motors exposed to water shall be given a dielectric test at least annually to ensure a safe operation and the results are to be kept with the carnival or in the amusement park.

f. Wire rope rollers, drums and sheaves. The mechanical devices that brake, control or come in contact with wire rope, such as rollers, drums and sheaves shall be examined on a periodic basis to ensure cleanliness and safe condition. Mechanical devices with broken chips, undue roughness or uneven wear shall be replaced immediately.

g. Articulations and bearings. The articulating pinions, frames, sweeps, eccentrics and other mechanical members shall be inspected for wear, out of round, cracks and other signs of deterioration, and shall be kept in good repair. Bearing surfaces, ball joints and other single or multiple direction mechanical surfaces shall be kept well lubricated, clean and inspected for out of round or out of spherical and shall be kept in good repair. Gear alignment and gear drives shall be kept in good repair.

h. Electrical wiring. Motor wiring, general service circuitry, decorative wiring, festoon wiring and concession stand wiring shall be inspected for insulation wear, fraying or other signs of deterioration such as cracking. Secure tape repairs may be used; however, use of tape repairs shall be kept to a minimum. Wire clips on articulating devices shall be kept in good repair, and wires at elbows and at the end of articulating devices shall be emphasized during inspections.

i. Safety devices. Retaining, restraining and containing devices shall be inspected to ensure they can continuously fulfill their function. Worn and damaged areas shall be repaired immediately or shall be cause for immediate replacement.

j. Hydraulic systems. The system is to be checked for leaks, damaged pipes and worn or deteriorated hoses.

k. Relief devices. Pressure relief valves or devices shall be exercised on a periodic basis to ensure that they operate properly. This includes compressed air and gas devices.

875—62.19(88A) Electrical. Electrical conductors and electrical equipment installed and utilized on or around permanent and temporary amusement parks and amusement rides shall conform to National Electrical Code, NFPA Number 70-1975. The following rules are stated for emphasis and clarification and are supplemental to the National Code. If any conflict exists or appears to exist, the National Code shall have precedence.

62.19(1) *Installation.* Portable electrical systems required by temporary amusement rides or devices and temporary structures shall be installed by a qualified electrician.

62.19(2) *Grounding.* A carnival shall not operate until all grounding electrode conductors, equipment and safety grounding connections are secured, polarized and tested. The grounding conductors shall conform to the National Electrical Code, NFPA Number 70-1975, Article 250—Grounding, Paragraphs 250-94 Size of Alternating Current Grounding Electrode Conductor and 250-95 Size of Equipment Grounding Conductors. The path to ground from circuits, equipment and conductor enclosures shall be permanent and continuous and shall have ample carrying capacity to conduct currents liable to be imposed on it, and shall have impedance sufficiently low to limit the potential above ground and to facilitate the operation of the overcurrent devices in the circuit.

a. Service ground. Equipment or generators operating from a separate supply or supplies which are located closer than 8 feet and all service equipment within itself shall be bonded together. The service ground shall be established by connecting the grounding conductor to the service entrance neutral bar in the hot truck or generator and to an approved type service grounding electrode such as ground rods. If 25 ohms or less is not obtained by a single grounding electrode such as a ground rod plate or pipe it shall be augmented by one additional grounding electrode of the type permitted by code.

b. Circuit and equipment safety. From the service entrance neutral bar, the circuit grounded and equipment safety grounding conductors shall be continuous and separate throughout the entire system. The portable outlet and terminal boxes shall contain a service ground through grounded receptacles for both circuit and safety. The equipment safety grounding conductors shall be attached to each ride, device or concession booth such that impedance is sufficiently low to limit the potential above ground and to facilitate the operation of the overcurrent devices in the circuit. Separate steel tracks or steel framework, such as roller coaster tracks or big slides, shall have grounding the same as the service equipment.

62.19(3) *Current limiting devices.* Conductors shall be fused or protected to their current carrying capacities. No more than six disconnect switches are to be in the hot truck or generator unless a main switch is provided. All distribution lines from hot trucks or generators shall be either 100 amp. or 200 amp. capacity. No fuses or current limiting devices shall be installed in the neutral or grounding conductors. Motors and lighting circuits shall be fused separately.

62.19(4) *Concession booth wiring.* Concession booth overhead wiring may be done with approved Type C brewery cord (not smaller than No. 12 with a built-in tracer for identification of the neutral wire) and weatherproof, pigtail lamp sockets, polarized, soldered and taped to the brewery cord with polarized male cord cap on the end that plugs into the current supply. Approved type pin sockets are acceptable when used on stranded conductors. Lengths up to 40 feet may be used without a messenger support wire provided the tie off on each end terminates in an insulating block or knob. S.O. cord sets may be

used. Cord sets not to be installed lower than 8 feet except where they are not accessible to the public. Other concession booth wiring may include any of the approved National Electrical Code wiring methods suitable for the condition of use. Portable wiring methods are covered specifically by Article 400 of the National Electrical Code, NFPA Number 70-1975; Section 305 shall also be utilized. If lamps and long sockets are lower than 8 feet, they shall be guarded and grounded.

62.19(5) *Bus bars.* Bus bars shall be located low or near the bottom of the cabinet. Separate bus bars shall be provided for grounding neutral and phase conductors.

Color codes painted on inside and outside of box, but not on contact surfaces of bus bars, are to be:

Ground—Green or Green with Yellow Strip	1st Phase—Black
Neutral—White or Natural Gray	2nd Phase—Red
	3rd Phase—Blue

On a four-wire delta-connected secondary, the phase conductor having the higher voltage to ground shall be orange. These color codes are to carry on through all connected wiring from service through portable power outlet and terminal boxes. Buses shall not be less than 200 ampere capacity. The load terminals in a switch-board or panel board shall be located so that it will be unnecessary to reach across or beyond a live bus (hot bus) to make a local connection.

62.19(6) *Portable power, terminal box, supply cords, and cables.*

a. *Portable power outlet and terminal box.* Boxes are to be rain tight and kept locked during the time when the general public is in the area. Wood boxes may be used if insulated on all sides with fire resistant material or painted with insulating varnish. The service power shall be connected to the box by receptacles mounted on the exterior walls which includes the safety grounding. The distribution within the box shall be accomplished by neutral terminal bar(s) and circuit breakers or fuses. The branch circuits which include the equipment safety grounding shall obtain their power through receptacles mounted on the exterior of the box. The exterior openings of the receptacles must be at least 6 inches above ground level and provided with a protective cover, draining eave or canvas, that will avoid the possibility of rain on the receptacle. If it is required to run conductors directly through an opening on the wall of the box for additional service or to obtain required ampacity, the opening(s) shall be color coded and shall be sized to prevent public accessibility to the interior of the box. The fuses or breakers, in the boxes, shall be secured permanently in place, and all connections to the bus bars within the boxes to be made with threaded screws and lugs of the proper size to fasten wiring in place.

b. *Supply cords and cables.* Portable or permanent cord or cable assemblies supplying power to the current-limiting disconnect of a ride, concession booth, or device shall contain within the assembly a conductor of equal size for equipment grounding. All conductors within the assembly shall not be smaller than #12 awg (American Wire Gage) wire and cords or cable assemblies purchased for this purpose after May 1, 1975, shall not be smaller than #10 awg (American Wire Gage) wire. Current-carrying conductors within the assembly shall be protected with current-limiting devices rated at or below the current-carrying capacity of the conductors.

62.19(7) *Power sources.* Electrical power sources shall be located in a manner permitting proper maintenance and shall be protected either by guards, fencing or enclosure to prevent exposure to hazard and to secure the equipment from the public.

These rules are intended to implement Iowa Code chapter 88A.

[Filed 2/21/73; amended 12/20/73, 4/8/75, 6/19/75]
[Filed 3/5/76, Notice 1/29/76—published 3/22/76, effective 4/30/76]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/92—published 5/13/92, effective 4/17/92]
[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]

CHAPTERS 63 and 64
Reserved

ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

CHAPTER 65
ELEVATOR SAFETY BOARD ADMINISTRATIVE AND REGULATORY AUTHORITY

875—65.1(89A) Definitions. The definitions contained in this rule apply to 875—Chapters 65 to 73.

"Board" means the elevator safety board.

"Board office" means the offices of the division of labor services of the department of workforce development.

"Commissioner" means the labor commissioner of the state of Iowa.

"Conveyance" means an elevator, construction personnel hoist, dumbwaiter, escalator, moving walk, lift or inclined or vertical wheelchair lift subject to regulation under Iowa Code chapter 89A, and includes hoistways, rails, guides, and all other related mechanical and electrical equipment.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—65.2(89A) Purpose and authority of board. The purpose of the board is to perform statutory duties pursuant to Iowa Code chapter 89A. The mission of the board is to protect the public health, safety and welfare relating to the safe and proper installation, repair, maintenance, alteration, use, and operation of conveyances in the state. The authority and responsibilities of the board include, but are not limited to:

65.2(1) Adopting rules necessary to protect public health, safety and welfare and to administer the duties of the board.

65.2(2) Hearing and deciding appeals concerning inspection reports that relate to the installation, operation, and maintenance of conveyances in the state.

65.2(3) Hearing and deciding appeals concerning actions by the commissioner to deny, suspend or revoke operating permits.

65.2(4) Establishing fees.

65.2(5) Establishing committees of the board, the members and chairpersons of which shall be appointed by the board chairperson.

65.2(6) Performing any other function authorized by law.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—65.3(21,89A) Organization of board.

65.3(1) The board shall be composed of the commissioner or the commissioner's designee and eight additional members appointed by the governor and confirmed by the senate.

65.3(2) The eight appointed members of the board shall include:

a. Two representatives from an elevator manufacturing company or its authorized representative.

b. Two representatives from elevator servicing companies.

c. One building owner or manager.

d. One representative employed by a local government in this state who is knowledgeable about building codes in this state.

e. One representative of workers actively involved in the installation, maintenance, and repair of elevators.

f. One licensed mechanical engineer.

65.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the commissioner nor the commissioner's designee may serve as chairperson. The chairperson shall, when present, preside at meetings, appoint committees, and perform all duties and exercise all powers of the chairperson. The vice chairperson shall, in the absence or incapacity of the chairperson, perform all duties and exercise all powers of the chairperson.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—65.4(21,89A) Public meetings.

65.4(1) The board shall hold at least one meeting each calendar quarter.

65.4(2) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings shall be conducted in accordance with Robert's Rules of Order.

65.4(3) The chairperson or the chairperson's designee shall prepare an agenda listing all matters to be discussed at the meeting.

65.4(4) A majority of the members of the board shall constitute a quorum, and all final motions and actions must receive a majority of a quorum vote.

65.4(5) Members of the public may be present during board meetings unless the board votes to hold a closed session in accordance with Iowa Code chapter 21. The dates and locations of board meetings may be obtained from the division of labor's Web site or the board office.

65.4(6) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person when a particular topic comes before the board may be granted at the discretion of the chairperson. The chairperson may limit total public comment time to ten minutes.

65.4(7) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

65.4(8) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—65.5(89A) Official communications. All official communications, including submissions and requests, shall be addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code chapters 21 and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]

[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]

CHAPTER 66
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES BY THE ELEVATOR SAFETY BOARD

875—66.1(17A,89A) Waivers of rules. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

875—66.2(17A,89A) Applicability of rule. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

875—66.3(17A,89A) Criteria for waiver or variance. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

66.3(1) The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

66.3(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

66.3(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;

66.3(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and

66.3(5) There is a reasonable relationship between the age of the conveyance and the variance requested.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—66.4(17A,89A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

66.4(1) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

66.4(2) *Other.* If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

66.4(3) *Filing petition.* A petition is deemed filed when it is received in the board's office. A petition should be sent to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The petitioner shall submit the petition and all related materials for consideration at least three weeks prior to a scheduled board meeting for board review of the petition at the meeting.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—66.5(17A,89A) Content of petition. The required form for a petition for waiver or variance is available on the board's Web site at http://www.iowaworkforce.org/labor/elevatorboard.htm. A petition for waiver shall include the following information where applicable and known to the petitioner:

66.5(1) The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

66.5(2) A description of and citation to the specific rule from which a waiver is requested.

66.5(3) The specific waiver requested, including the precise scope and duration.

66.5(4) The relevant facts that the petitioner believes would justify a waiver under each of the five criteria described in rule 875—66.3(17A,89A). This statement shall include a signed statement from the

petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

66.5(5) A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the conveyance affected by the proposed waiver.

66.5(6) Information regarding the board's action in similar cases.

66.5(7) The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

66.5(8) The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

66.5(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

66.5(10) Signed releases of information authorizing persons with knowledge regarding the petition to furnish the board with information relevant to the petition for waiver.

66.5(11) The state identification number of the conveyance.

66.5(12) The age of the conveyance.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—66.6(17A,89A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the board related to the waiver request.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—66.7(17A,89A) Notice. The board shall acknowledge a petition within ten days of its receipt in the board office. The board shall ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

875—66.8(17A,89A) Board review procedures.

66.8(1) Unless the board makes other arrangements, petitions for waiver will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting.

66.8(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

875—66.9(17A,89A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

875—66.10(17A,89A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

66.10(1) *Board discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each

petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

66.10(2) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

66.10(3) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

66.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

66.10(5) *Conditions.* The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

66.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

66.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practical but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

66.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

66.10(9) *Service of order.* Within 14 days of the ruling, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

66.10(10) *Posting of orders granting waivers.* The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the machine room corresponding to the conveyance. The order or a copy of the order granting a waiver that relates to a conveyance that does not have a machine room shall be posted in a protective sleeve attached to the inside of the controller cabinet door corresponding to the conveyance.

[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—66.11(17A,89A) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders contain information the board is authorized or required to keep confidential, the board may instruct the board office to accordingly redact confidential information from petitions or orders prior to public inspection.

875—66.12(17A,89A) Summary reports. Summary information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests shall be included in semiannual reports prepared by the board. Copies of this report shall be provided to the administrative rules coordinator and the administrative rules review committee.

875—66.13(17A,89A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

66.13(1) The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

66.13(2) The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

66.13(3) The subject of the waiver order has failed to comply with all conditions contained in the order.

875—66.14(17A,89A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

875—66.15(17A,89A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the specific conveyance to which the order pertains in any proceeding in which the rule in question is sought to be invoked.

875—66.16(17A,89A) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 22, and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed 7/3/07, Notice 4/25/07—published 8/1/07, effective 9/5/07]
[Filed 1/25/08, Notice 11/7/07—published 2/13/08, effective 3/19/08]
[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]
[Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]

CHAPTER 67
ELEVATOR SAFETY BOARD PETITIONS FOR RULE MAKING

875—67.1(17A,89A) Petitions for rule making. Any person or agency may file a petition for rule making with the board requesting the adoption, amendment or repeal of a rule. The required form for a petition for rule making is available on the board's Web site at http://www.iowaworkforce.org/labor/elevatorboard.htm. The petition shall be filed at the location specified in rule 875—65.5(89A). A petition is deemed filed when it is received by the board office. The board office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be in writing and provide the following information where applicable and known to the petitioner:

67.1(1) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

67.1(2) A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

67.1(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

67.1(4) A brief summary of any data supporting the action urged in the petition.

67.1(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.

67.1(6) The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

67.1(7) The board may deny a petition because it does not provide the required information. The petitioner may file a new petition on the same subject that seeks to eliminate the grounds for the board's rejection.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—67.2(17A,89A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

875—67.3(17A,89A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

875—67.4(17A,89A) Board review procedures.

67.4(1) Unless the board makes other arrangements, petitions for rule making will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

67.4(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

67.4(3) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by

regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date the board office mails the required notification to the petitioner.

67.4(4) Denial of a petition because it does not contain the required information does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]

[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]

CHAPTER 68
DECLARATORY ORDERS BY THE ELEVATOR SAFETY BOARD

875—68.1(17A,89A) Petition for declaratory order. Any person may file at the board's offices a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

68.1(1) The required form for a petition for declaratory order is available on the board's Web site at http://www.iowaworkforce.org/labor/elevatorboard.htm. The petition must be in writing and provide the following information where applicable and known to the petitioner:

a. A clear and concise statement of all relevant facts on which the order is requested.

b. A citation and the relevant language of the specific statutes, rules, or orders whose applicability is questioned, and any other relevant law.

c. Clear and concise questions the petitioner wants the board to answer.

d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

e. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

f. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.

g. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.

68.1(2) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—68.2(17A,89A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 875—68.6(17A,89A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

875—68.3(17A,89A) Intervention.

68.3(1) A person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

68.3(2) At the board's discretion, a person who files a petition for intervention more than 20 days after the filing of a petition for declaratory order but prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order.

68.3(3) A petition for intervention shall be filed at the board office. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

a. A petition for intervention must be in writing and provide the following information where applicable and known to the requester:

(1) Facts supporting the intervenor's standing and qualifications for intervention.

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

b. The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—68.4(17A,89A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

875—68.5(17A,89A) Inquiries. Inquiries concerning the status of a declaratory order may be made at the board office.

875—68.6(17A,89A) Service and filing of petitions and other papers.

68.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

68.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

68.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rules 875—69.10(17A,89A) and 875—69.11(17A,89A).

875—68.7(17A,89A) Board review procedures.

68.7(1) Within 30 days after receipt of a petition for a declaratory order, the board shall issue a document that does one of the following:

a. Declares the applicability of the statute, rule or order to the specified circumstances,

b. Sets the matter for specific proceedings,

c. Agrees to issue a declaratory order by a specified time, or

d. Declines to issue a declaratory order and sets forth the reasons for its actions as provided in subrule 68.9(1).

68.7(2) The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

68.7(3) The petitioner and all intervenors shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—68.8(17A,89A) Action on petition. Rescinded IAB 3/24/10, effective 4/28/10.

875—68.9(17A,89A) Refusal to issue order.

68.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not provide the required information.

b. Rescinded IAB 3/24/10, effective 4/28/10.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

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

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

68.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

68.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—68.10(17A,89A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

875—68.11(17A,89A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

875—68.12(17A,89A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]

[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]

[Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]

CHAPTER 69
CONTESTED CASES BEFORE THE ELEVATOR SAFETY BOARD

875—69.1(17A,89A) Reconsideration of inspection report. The owner or operator of a piece of equipment subject to a written inspection report may petition the commissioner for reconsideration of the report within 30 days of the issuance of the report. Failure to seek timely reconsideration of the inspection report from the commissioner shall be deemed a waiver of all appeal rights under Iowa Code section 89A.13(5). The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and codes adopted by reference rests upon the petitioning owner or operator.

69.1(1) A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's Web site at http://www.iowaworkforce.org/labor/elevatorboard.htm. A petition for reconsideration shall specify:

a. The party seeking reconsideration, including mailing address and telephone number;
b. The location of the equipment subject to the challenged inspection report;
c. The inspection date;
d. The inspector who issued the challenged inspection report;
e. The specific findings or conclusions to which exception is taken;
f. The relief sought.

69.1(2) A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all relevant documents that the petitioning party desires the commissioner to consider when evaluating the petition.

69.1(3) The commissioner or a designee of the commissioner is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the commissioner deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the commissioner to discover documents or other information that was not submitted with the petition for reconsideration.

69.1(4) Any petition for reconsideration that is not received by the office of the commissioner within 30 days of the issuance of the challenged inspection report shall be deemed untimely and will not be considered by the commissioner.

69.1(5) The commissioner shall not consider any request for waiver or variance of an administrative rule made as part of a petition for reconsideration. Requests for waivers or variances of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 66.

69.1(6) The commissioner shall issue a written ruling on the petition for reconsideration. In ruling on a petition for reconsideration, the commissioner may:

a. Affirm the inspection report as issued;
b. Issue an amended inspection report;
c. Rescind the inspection report;
d. Deny the petition as untimely.

69.1(7) Any petition for reconsideration that is not ruled upon by the commissioner within 20 days of receipt by the office of the commissioner shall be deemed denied by the commissioner and the challenged inspection report shall be considered affirmed as issued.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—69.2(17A,89A) Appeal to the board.

69.2(1) A decision by the commissioner to deny, suspend, or revoke an operating permit; a deemed denial of a petition for reconsideration; and the commissioner's ruling on a petition for reconsideration are subject to appeal to the board.

69.2(2) An appeal to the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A.

69.2(3) The commissioner shall have an automatic right of intervention in any appeal and shall defend the ruling in a contested case proceeding.

69.2(4) Only those issues raised by the petitioner in the petition for reconsideration will be preserved for appeal to the board in an appeal from the deemed denial of a petition for reconsideration and an appeal from the commissioner's ruling on a petition for reconsideration.

69.2(5) At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal to the board is available on the board's Web site at http://www.iowaworkforce.org/labor/elevatorboard.htm.

69.2(6) The deadlines for filing an appeal are set forth below:

a. Reconsideration of an inspection report. An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner's written ruling on a petition for reconsideration or the deemed denial of a petition for reconsideration.

b. Notification of intent to deny, suspend, or revoke an operating permit. An appeal must be filed in writing with the board within 30 calendar days of the appellant's receipt of the notification of intent to deny, suspend, or revoke an operating permit.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.3(17A,89A) Informal review. If the appellant requests and the commissioner does not object, the board may conduct an informal review of the facts and circumstances subject to the provisions of this rule.

69.3(1) In order to preserve the ability of board members to participate in decision making, a party who elects an informal review under this rule waives the party's right to seek disqualification of a board member as a presiding officer in a later contested case proceeding based on the board member's participation in the informal review. A party who elects informal review retains the right to seek disqualification of board members on any other ground pursuant to subrule 69.14(4).

69.3(2) The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

69.3(3) Rules 875—69.4(17A,89A) through 875—69.31(17A,89A) do not apply during informal review.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.4(17A,89A) Delivery of notice. Delivery of the notice of hearing by the board constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the appellant, the appellant's attorney, if known, and the commissioner.

875—69.5(17A,89A) Contents of notice. The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. The notice shall contain a statement that it is the appellant's burden on appeal to prove compliance with all applicable statutory provisions, administrative rules, and ASME code sections. The notice shall also contain a reference to the applicable statute and rules.

875—69.6(17A,89A) Scope of issues. Rescinded IAB 6/13/12, effective 7/18/12.

875—69.7(17A,89A) File transmitted to the board. Within 30 days of the issuance of a notice of hearing, the commissioner shall forward to each board member and all parties of record to the appeal copies of the applicable documents set forth below:

1. Inspection report,
2. Petition for reconsideration with the appellant's attachments,
3. Documents obtained by the commissioner in ruling on the petition for reconsideration,
4. Commissioner's ruling on the petition for reconsideration,
5. Commissioner's decision denying, suspending, or revoking an operating permit, and

6. Appeal to the board.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.8(17A,89A) Legal representation. Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

875—69.9(17A,89A) Presiding officer.

69.9(1) The presiding officer in all contested cases shall be the board, a panel of board members, or an administrative law judge assigned by the department of inspections and appeals. When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 69.9(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

69.9(2) Any party to a contested case that 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 which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

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

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

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

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

f. The request was not timely filed.

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

69.9(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and to issue a proposed decision in a contested case shall have a J.D. degree unless this requirement is waived by the board.

69.9(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

69.9(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 875—69.26(17A,89A) and 875—69.27(17A,89A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

69.9(6) Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members shall have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.10(17A,89A) Service and filing.

69.10(1) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

69.10(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 personal 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.

69.10(3) *Filing—when required.* All documents that are required to be served upon a party shall be filed simultaneously with the board.

69.10(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board at the location set forth in rule 875—65.5(89A), 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.

69.10(5) *Proof of mailing.* Proof of mailing includes either:

a. A legible United States Postal Service postmark on the envelope;

b. A certified mail return receipt;

c. A notarized affidavit; or

d. 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 Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.
>
> (Date) (Signature)

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.11(17A,89A) Time requirements.

69.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

69.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

875—69.12(17A,89A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

875—69.13(17A,89A) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

875—69.14(17A,89A) Disqualification.

69.14(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, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

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

69.14(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 board 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 subrule 69.25(7).

69.14(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.

69.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 69.14(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.

69.14(5) 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.

69.14(6) 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 875—69.26(17A,89A) and seek a stay under rule 875—69.30(17A,89A).

875—69.15(17A,89A) Consolidation and severance.

69.15(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 party to those proceedings.

69.15(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.16(17A,89A) Discovery.

69.16(1) Pursuant to Iowa Code chapter 17A, 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.

69.16(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. 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 by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

875—69.17(17A,89A) Subpoenas in a contested case. Pursuant to Iowa Code section 17A.13, subsection 1, the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

69.17(1) Upon the written request of a party, the presiding officer shall issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

69.17(2) A request for a subpoena shall include the following information, as applicable:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time, and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other evidence requested;

f. The date, time and location for production, or inspection and copying.

69.17(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time, and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other evidence the person is commanded to produce;

g. The date, time and location for production, or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the presiding officer;

j. The date of issuance;

k. A return of service attached to the subpoena.

69.17(4) The presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

69.17(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case 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.

69.17(6) Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

69.17(7) 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 board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

69.17(8) If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.18(17A,89A) Motions.

69.18(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.

69.18(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 board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

69.18(3) The presiding officer may schedule oral argument on any motion.

69.18(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

69.18(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 875—69.29(89A) and appeal pursuant to subrule 69.27(3).

875—69.19(17A,89A) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. All settlements are subject to approval by a majority of the board. No settlement shall be presented to the board for approval except in final, written form executed by the parties. If the board fails to approve the settlement, the settlement shall be of no force or effect to either party.

[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.20(17A,89A) Prehearing conference.

69.20(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

69.20(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who 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.

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.

69.20(3) In addition to the requirements of subrule 69.20(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 that 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 that will expedite the hearing.

69.20(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

875—69.21(17A,89A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

69.21(1) A written application for a continuance shall:

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

b. State the specific reasons for the request; and

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

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

69.21(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

875—69.22(17A,89A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

875—69.23(17A,89A) Hearing procedures.

69.23(1) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

69.23(2) All objections shall be timely made and stated on the record.

69.23(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

69.23(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.

69.23(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

69.23(6) Witnesses may be sequestered during the hearing.

69.23(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. The 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, the parties may be given the opportunity to present final arguments.

f. The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

69.23(8) The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

69.23(9) The hearing shall be open to the public, except as otherwise provided by law.

69.23(10) Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the board for five years after the resolution of the case.

69.23(11) Default.

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

b. 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.

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board 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 subrule 69.27(3). A motion to vacate must state all facts relied upon by the moving party that establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact must be substantiated by at least one attached, sworn affidavit of a person with personal knowledge.

d. 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.

e. 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.

f. "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 1.977.

g. 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.

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

i. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—69.24(17A,89A) Evidence.

69.24(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.

69.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

69.24(3) Evidence in the proceeding shall be confined to the contested issues as identified in the notice of hearing.

69.24(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

69.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

69.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

875—69.25(17A,89A) Ex parte communication.

69.25(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. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

69.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

69.25(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

69.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of

notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

69.25(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.

69.25(6) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

a. If the presiding officer determines that disqualification is warranted, the following shall be submitted for inclusion in the record under seal by protective order:

(1) A copy of any prohibited written communication,

(2) All written responses to the communication,

(3) A written summary stating the substance of any prohibited oral or other communication not available in written form and all responses made, and

(4) The identity of each person from whom the presiding officer received a prohibited ex parte communication; or

b. 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.

69.25(7) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13, subsection 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.

69.25(8) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the commissioner.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—69.26(17A,89A) Interlocutory appeals.

69.26(1) Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy.

69.26(2) Any request for interlocutory review under this rule must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

69.26(3) This rule does not apply to the ruling of an administrative law judge after hearing on a motion to quash or modify a subpoena. The procedures for challenging such a ruling are set forth in subrule 69.17(7).

[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.27(17A,89A) Decisions.

69.27(1) *Proposed decision.* Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

69.27(2) *Final decision.* When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent

by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the counsel of record.

69.27(3) *Appeals and review.*

a. *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

b. *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

c. *Notice of appeal.* An appeal of a proposed decision 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:

(1) The parties initiating the appeal;

(2) The proposed decision or order appealed from;

(3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought;

(5) The grounds for relief.

d. *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 14 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.

e. *Scheduling.* The board shall issue a schedule for consideration of the appeal.

f. *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The 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.

g. *Record.* The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

875—69.28(17A,89A) Contested cases with no factual disputes. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

875—69.29(17A,89A) Applications for rehearing.

69.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

69.29(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.

69.29(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

69.29(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.

69.29(5) *Disposition.* The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

875—69.30(17A,89A) Stays of board actions.

69.30(1) *When available.*

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

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

69.30(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

69.30(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

875—69.31(17A,89A) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

69.31(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

69.31(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 69.29(5).

These rules are intended to implement Iowa Code chapters 17A and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]
[Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]

CHAPTER 70
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES OF THE ELEVATOR SAFETY BOARD

875—70.1(22,89A) Definitions. As used in this chapter:

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

"Custodian" in these rules means the elevator safety board.

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

"Record" in these rules means the whole or a part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the board.

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

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.2(22,89A) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22; the board shall cooperate with members of the public in implementing the provisions of that chapter.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.3(22,89A) Requests for access to records.

70.3(1) *Location of record.* A request for access to a record should be directed to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

70.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

70.3(3) *Request for access.* Requests for access to open records may be made in writing, in person, by facsimile, E-mail, or other electronic means, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the board's response. A person shall not be required to give a reason for requesting an open record. While agencies are not required by Iowa Code chapter 22 to respond to requests for public records that are not made in person, the board will respond to such requests as reasonable under the circumstances.

70.3(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a

confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 875—70.4(22,89A) and other applicable provisions of law.

70.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

70.3(6) *Copying.* A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available in the board office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

70.3(7) *Fees.*

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

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board shall be prominently posted in board offices. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and posted in board offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The custodian shall prominently post in board offices the hourly fees to be charged for supervision of records during examination and copying. The hourly fee shall be based upon the pay scale of the employee involved and other actual costs incurred. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

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

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.4(22,89A) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 875—70.3(22,89A).

70.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

70.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

70.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential

record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

70.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

70.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

875—70.5(22,89A) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

70.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

70.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

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

70.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the board does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

70.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

70.5(5) *Request granted or deferred.* If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

70.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.6(22,89A) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.7(22,89A) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of an attorney before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.8(22,89A) Disclosures without the consent of the subject.

70.8(1) Open records are routinely disclosed without the consent of the subject.

70.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 875—70.9(17A, 89A) or in the notice for a particular record system.

b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.9(17A,89A) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. "Routine use" includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

70.9(1) Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes a legitimate need to use confidential records.

70.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

70.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

70.9(4) Transfers of information within the board, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

70.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

70.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

70.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in appeal proceedings.

70.9(8) Transmittal to the district court of the record in judicial review proceedings pursuant to Iowa Code section 17A.19.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.10(22,89A) Consensual disclosure of confidential records.

70.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 875—70.7(22,89A).

70.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

875—70.11(22,89A) Release to subject.

70.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the board need not release the following records to the subject:

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

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

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

d. Other records may be withheld from the subject as authorized by law.

70.11(2) When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.12(21,22,89A) Availability of records.

70.12(1) *General.* Board records are open for public inspection and copying unless otherwise provided by rule or law.

70.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal information in confidential personnel records of board members and licensees. (Iowa Code section 22.7(11))

b. Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

c. Information or records received from a restricted source and any other information or records made confidential by law.

d. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

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

70.12(3) *Authority to release confidential records.* The board may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 875—70.4(22,89). If the board initially determines that it will release such records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 70.4(3).
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.13(22,89A) Applicability. This chapter does not:

70.13(1) Require the board to index or retrieve records that contain information about individuals by a person's name or other personal identifier.

70.13(2) Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

70.13(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the board that are governed by the regulations of another agency.

70.13(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

70.13(5) Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.14(17A,22,89A) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems. For each record system, this rule describes the legal authority for the collection of that information. The record systems maintained by the board are:

70.14(1) *Personnel records.* These records contain personal information about board members which may be confidential pursuant to Iowa Code section 22.7(11). The records may include but are not limited to biographical information, medical information relating to disability, and information required for expense reimbursement.

70.14(2) *Contested case records.* Contested case records are maintained and contain names of the people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records. These records are collected pursuant to Iowa Code section 89A.11.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.15(17A,21,22,89A) Other groups of records. This rule describes groups of records maintained by the board other than record systems. These records are routinely available to the public. However, the board's files of these records may contain confidential information. These records may contain information about individuals. These records include:

70.15(1) *Rule-making records.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are stored on paper and electronically.

70.15(2) *Board records.* Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the board office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored on paper and electronically.

70.15(3) *Board decisions, findings of fact, final orders, and other statements of law, policy, or declaratory orders issued by the board in the performance of its functions.* These records are open to the public except for information that is confidential according to rule 875—70.12(21,22,89A). This information is stored on paper and electronically.

70.15(4) *Waivers and variances.* Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others are stored on paper and electronically.

70.15(5) *Publications.* News releases, project reports, newsletters, and other publications are available from the board office. These records may contain information about individuals. This information is stored on paper and electronically, and some publications may be found on the board's Web site.

70.15(6) *Other records.* Other records that are not exempted from disclosure by law may be stored on paper or electronically.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.16(22,89A) Data processing system. Board records are not stored in a data processing system which matches, collates, or permits comparison of personally identifiable information in one record system with personally identifiable information in another record system.

875—70.17(22,89A) Notice to suppliers of information. Persons that are requested by the board to provide information to the board are notified pursuant to this rule of uses the board will make of the information.

70.17(1) The board may request names and affiliations from members of the public that attend board meetings. Except for closed sessions, the records of board meetings are public records and information supplied will be subject to records requests pursuant to this chapter and Iowa Code chapter 22. Provision of this information is voluntary, and there will be no consequences for failure to provide requested information unless the person is also covered by subrule 70.17(2).

70.17(2) The board will request name, contact information, and affiliation from persons requesting board action. This information will be used as needed to process the request for board action. Requests for board action are public records, and information supplied will be subject to open records requests

pursuant to this chapter and Iowa Code chapter 22. Insufficient contact information provided with the request for board action could result in a denial of the request for board action.

These rules are intended to implement Iowa Code chapters 17A, 21, 22 and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]

[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]

CHAPTER 71
ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

875—71.1(89A) Definitions. The definitions contained in this rule shall apply to 875—Chapters 71, 72, and 73.

"Acceptance checklist" means a checklist available on the Web site of the division of labor services that includes a list of major systems and components of conveyances.

"AECO" means an elevator/escalator certification organization accredited pursuant to ASME A17.7.

"Approved" means approved by the division.

"CCD" means code compliance documentation as described in ASME A17.7, Section 2.10.

"CEI" means a person who is a certified elevator inspector or certified elevator inspector supervisor and who received the certification from a certifying organization that holds a valid document of accreditation issued by an accreditation body in accordance with ANSI/ISO/IEC 17024.

"Control" means the system governing the starting, stopping, direction of motion, acceleration, speed and deceleration of the moving member.

"Conveyance" means any elevator, escalator, dumbwaiter, wind tower lift, CPH, or other equipment governed by Iowa Code chapter 89A.

"CPH" means a construction personnel hoist.

"CPH jump" means the addition or removal of mast or tower allowing a change in the hoist service elevation of a CPH.

"Division" means the labor services division of the workforce development department.

"Elevator" means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction and which serves two or more floors of a building or structure. "Elevator" does not include a CPH.

"Elevator mechanic" means a person who meets the standard for "elevator personnel" found in ASME A17.1.

"Hoistway-unit system" means a series of hoistway-door interlocks, hoistway-door electric contacts or hoistway-door combination mechanical locks and electric contacts, or a combination thereof, the function of which is to prevent operation of the driving machine by the normal operating device unless all hoistway doors are in the closed position and, if required, locked.

"Wind tower lift" means a conveyance designed and utilized solely for movement of trained and authorized people and small loads in wind towers built for the production of electricity.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 0685C**, IAB 4/17/13, effective 5/22/13; **ARC 1159C**, IAB 10/30/13, effective 12/4/13]

875—71.2(89A) Registration of conveyances. The owner or authorized agent of each operable conveyance not previously registered shall register the conveyance. An application to install a new conveyance shall constitute registration. All registrations shall be submitted to the commissioner on forms available from the division of labor services and shall include all information requested by the labor commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.3(89A) State identification number. The commissioner shall assign an identification number to each conveyance that shall be stamped on a metal tag permanently attached to the controller, to the electrical disconnecting switch, or in a wind tower lift cage.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.4(89A) Responsibility for obtaining permits. The procuring of all permits and the payment of all fees required by this chapter shall be the responsibility of the owner. Failure to obtain the appropriate permit prior to installation, alteration or operation may, at the discretion of the labor commissioner, result in a referral to the attorney general for prosecution of criminal penalties as described in Iowa Code section 89A.17.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.5(89A) Installation permits.

71.5(1) Installation shall not begin until an installation permit has been issued by the division. A separate installation permit shall be issued for each conveyance, except that a single installation permit shall cover all identical wind tower lifts installed as the result of one construction contract in identical wind towers in a single wind farm.

71.5(2) Application for an installation permit shall be accompanied by the fee specified in rule 875—71.16(89A), shall be in the format required by the labor commissioner, and shall include the following, as applicable:

a. Sectional plan of car and hoistway.

b. Sectional plan of machine room.

c. Sectional elevation of hoistway and machine room including the pit, bottom and top clearance of car and counterweights.

d. Size and weight of rails and guide rail bracket spacing.

e. The estimated maximum vertical forces on the guide rails on application of the safety device.

f. In the case of freight elevators for class B or class C loading, the horizontal forces on the guide rail faces during loading and unloading and the estimated maximum horizontal forces in a post-wise direction on the guide rail faces on the application of the safety device.

g. The size and weight per foot of any rail reinforcements where rail reinforcements are provided.

h. Job specifications.

i. For a conveyance covered by ASME A17.7, a complete copy of the CCD with attachments and a complete copy of the Certificate of Conformance with attachments as described by ASME A17.7, Appendix I, Section 4.5.

j. For a CPH, the number of CPH jumps planned, the planned dates for each CPH jump, and the change in the number of floors anticipated with each CPH jump.

71.5(3) A CPH installation permit issued in response to an application submitted in full compliance with this subrule permits each planned CPH jump. Each CPH jump shall be considered an alteration. The fee submitted for a CPH installation permit shall be the total of the CPH installation permit fee as set forth in subrule 71.16(3) and the CPH alteration permit fee as set forth in subrule 71.16(4).

71.5(4) Issuance of an installation permit shall not be construed as a waiver or variance of any requirement of law.

71.5(5) The installation permit or a copy of the installation permit shall be conspicuously posted at the worksite. All the wind towers covered by a single installation permit shall be considered a single worksite, and posting one copy of the installation permit at the construction project office shall be sufficient compliance with this subrule.

71.5(6) Except as described in paragraphs 71.5(6)*"a"* and *"b,"* the installation permit shall expire upon the earlier of the completion of the installation as described in the permit application or one year after issuance.

a. For a CPH, the installation permit shall expire upon completion of the last CPH jump.

b. For any conveyance, during the tenth month after issuance, and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension may be granted at the discretion of the labor commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10]

875—71.6(89A) Construction permits. A construction permit authorizes the temporary, limited use of an elevator for purposes relating to construction or demolition.

71.6(1) Use of the elevator shall not begin until a construction permit has been issued by the division.

71.6(2) Application for a construction permit shall be in the format required by the labor commissioner and must include all the information requested by the labor commissioner and the fee specified by this chapter.

71.6(3) Upon submission of the completed application and fee, a state inspector shall be scheduled to inspect the elevator. Construction permits shall be issued only if the following criteria are met:

a. The elevator has been successfully tested pursuant to the requirements of ASME A17.1, Section 8.11.5.13; and

b. The applicable requirements of ASME A17.1, Section 5.10, are met.

71.6(4) The construction permit or a copy of the construction permit shall be posted conspicuously in a protective sleeve in the elevator car.

71.6(5) The construction permit shall expire 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of up to 90 days may be granted at the discretion of the labor commissioner.

71.6(6) Elevators with a construction permit but without an operating permit shall not be accessible to the general public.

71.6(7) Failure to comply with these provisions may result in the revocation of the construction permit.

71.6(8) An operating permit shall not be issued before construction and an acceptance inspection are complete.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.7(89A) Operating permits.

71.7(1) Operation of equipment covered by this chapter without a current operating permit is prohibited, except as authorized by rules 875—71.6(89A), 875—71.8(89A), and 875—71.20(89A). If operation of a conveyance is prohibited under this rule, the labor commissioner may post notice on the conveyance that it is not to be used. The conveyance may be returned to service only after an operating permit for the conveyance has been issued or reissued.

71.7(2) Operating permits shall not be issued prior to successful completion of an inspection pursuant to rule 875—71.11(89A) and payment of all permit and inspection fees owed to the division.

71.7(3) Current operating permits or copies of current operating permits shall be conspicuously displayed as follows:

a. The operating permit for an elevator or CPH shall be posted in the car.

b. The operating permit for an escalator, dumbwaiter, wind tower lift, moving walk, or wheelchair lift shall be posted on or near the subject conveyance.

71.7(4) An operating permit shall expire 60 days after the first permit renewal inspection following the issuance of the operating permit, unless an earlier date is dictated by this rule.

71.7(5) An operating permit is automatically suspended when an alteration begins. The operating permit automatically resumes when the elevator passes an inspection pursuant to rule 875—71.11(89A).

71.7(6) An operating permit is automatically terminated when an imminent danger notice is posted on the conveyance.

71.7(7) Notwithstanding other provisions of this rule, at the discretion of the labor commissioner, a temporary operating permit may be issued for up to 30 days provided the inspection has been completed and no code violations were identified. Issuance of a temporary operating permit does not extend the expiration date of the conveyance's operating permit.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 0318C**, IAB 9/5/12, effective 10/10/12; **ARC 0574C**, IAB 2/6/13, effective 3/13/13; **ARC 0685C**, IAB 4/17/13, effective 5/22/13]

875—71.8(89A) Controller upgrade permits. A controller upgrade permit may be issued to allow operation of an elevator while work to upgrade controls requires deactivation of the Phase I recall initiated by smoke sensing devices. Each elevator to be altered requires a separate controller upgrade permit. The duration of a controller upgrade permit shall not exceed 90 days. Each elevator in the group shall pass inspection pursuant to rule 875—71.11(89A) prior to being placed back into service.

71.8(1) A controller upgrade permit shall not be issued unless each of the following conditions is met:

a. Two or more elevators share a lobby at the level of the recall floor.

b. The project includes the installation of new elevator controllers in all of the elevators in the group.

c. Phase I fire recall initiated by a key-operated switch and all other controls shall be properly functioning for each elevator available for use.

d. There is a current alteration permit for the project.

e. A complete application for the controller upgrade permit and the fee established by this chapter have been submitted and accepted.

71.8(2) A controller upgrade permit shall not be construed to waive or excuse compliance with the requirements of any other governmental entity, including the department of public safety.

71.8(3) Upon the submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of the permit for up to 60 days may be granted.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.9(89A) Alteration permits.

71.9(1) Alteration shall not begin until an alteration permit has been issued by the division.

71.9(2) Application for an alteration permit shall be in the format required by the labor commissioner and shall include drawings and specifications of all planned changes and the fee specified by rule 875—71.16(89A).

71.9(3) Issuance of an alteration permit shall not be construed as a waiver or variance of any requirement of law.

71.9(4) The alteration permit or a copy of the alteration permit shall be conspicuously posted at the worksite.

71.9(5) If a complete installation permit application was submitted for a CPH pursuant to subrule 71.5(3), at least seven days' advance notice of each CPH jump shall be provided to the labor commissioner.

71.9(6) The alteration permit shall expire upon the earlier of the completion of the alteration as described in the permit application or 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification and other required information, an extension of the alteration permit may be granted at the discretion of the labor commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0685C**, IAB 4/17/13, effective 5/22/13]

875—71.10(89A) Alterations.

71.10(1) Alterations or changes shall comply with rule 875—72.13(89A) or rule 875—73.8(89A), as applicable.

71.10(2) A conveyance that is relocated shall be brought into compliance with all codes that are applicable at the time of relocation.

71.10(3) With the exception of replacing brushes on or adding brushes to escalators, all alterations of conveyances other than elevators shall require that the entire conveyance be brought into compliance with the current code.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 0685C**, IAB 4/17/13, effective 5/22/13]

875—71.11(89A) Inspections. Pursuant to Iowa Code section 89A.12, inspections by the labor commissioner's designee shall be permitted at reasonable times with or without prior notice.

71.11(1) *Scope of inspections.*

a. *Comprehensive.* Periodic inspections shall be comprehensive. Elevators being transferred from construction permits to operating permits, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances shall be inspected in their entirety prior to operation.

b. *Limited.* The scope of an inspection after an alteration shall be determined by rule 875—72.13(89A) or 875—73.8(89A), as applicable. However, if the inspector notices a safety hazard in plain view outside the altered components, or if the periodic inspection is due, the entire conveyance shall be inspected.

71.11(2) *When inspections will occur.* When the timing of two different types of inspection on a single conveyance coincide, a state inspector may perform both inspections in one visit.

a. *Periodic inspections.*

(1) Each CPH shall be inspected at intervals not to exceed three months. All other periodic conveyance inspections by state inspectors shall be conducted annually unless the labor commissioner determines resources do not allow annual inspections. If the labor commissioner determines quarterly inspections of CPHs and annual inspections of other state-inspected conveyances are not feasible due to insufficient resources, the labor commissioner shall determine the inspection schedule.

(2) Conveyance inspections by special inspectors shall be conducted at least annually.

b. *Acceptance inspections.* A CPH shall be inspected pursuant to the schedule in ANSI A10.4 – 2007, Chapter 26. For all other conveyances, an acceptance inspection shall occur:

(1) After each relocation,

(2) After each alteration,

(3) For a new installation, not less than two business days after a completed acceptance checklist is submitted by the conveyance installation company,

(4) Before an elevator subject to a construction permit receives an operating permit, and

(5) Before a previously dormant conveyance is returned to service.

c. *Other inspections.* Inspections may be made when the commissioner reasonably believes that a conveyance is not in compliance with the rules. Accidents, complaints, or requests for consultative inspections may result in inspections by the labor commissioner's designee.

71.11(3) *Who may perform inspections.*

a. The labor commissioner's designee shall inspect altered conveyances, CPHs, previously dormant conveyances being returned to service, wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), relocated conveyances, and new conveyances.

b. Except as noted in 71.11(3)*"c,"* annual inspections may be performed by state inspectors or special inspectors authorized by the labor commissioner pursuant to rule 875—71.12(89A).

c. An inspection report by a special inspector shall not be accepted as the required, annual inspection if the conveyance is under contract for maintenance, installation or alteration by the special inspector or the special inspector's employer, or if the property is owned or leased by the special inspector or the special inspector's employer.

71.11(4) *Inspection standards.* Inspections shall be performed in accordance with applicable safety codes or documents such as:

a. CCD;

b. ASME A17.1, Sections 8.10 and 8.11, except Section 8.11.1.1;

c. ANSI A10.4-2007;

d. Rule 875—72.12(89A) for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A); or

e. ASME A18.1.

71.11(5) *Inspection reports.*

a. All inspectors shall file inspection reports on forms approved by the commissioner within 30 days from the date of inspection and shall provide owners of conveyances with copies of completed inspection reports. The inspection report must separately list each unsafe condition and the applicable, specific code citation. Up to 30 days shall be allowed for correction of the unsafe conditions.

b. The owner may file a petition for reconsideration of an inspection report pursuant to 875—Chapter 69. The timely and proper filing of a petition for reconsideration extends the deadline for correction of the hazards that are subject to the petition for reconsideration.

71.11(6) *Extension of time.* The owner may petition the commissioner for up to 60 additional days to make the necessary corrections. The time frames set forth in subrule 71.11(7) may be adjusted by the labor commissioner as necessary to accommodate an extension of time.

71.11(7) *Correction of unsafe conditions.* In the absence of a determination on reconsideration or appeal that correction of hazards is not required, all unsafe conditions identified in the inspection report shall be corrected. The labor commissioner shall verify correction of all unsafe conditions identified

in the inspection report by sending a state inspector to reinspect the conveyance for the fee set forth in rule 875—71.16(89A), or by reviewing appropriate documentation such as a photograph, invoice, other verifiable document, or subsequent inspection report. The time frames set forth in this subrule may be accelerated at the request of the owner.

a. Promptly upon receipt of an inspection report listing unsafe conditions, the labor commissioner will send to the owner and the special inspector, if any, an abatement order. A copy of the inspection report shall be attached to the abatement order. Unless a special inspector conducted the inspection, the order may specify a period that ends no more than 45 days after the inspection during which the owner may submit written evidence that the unsafe conditions have been corrected. The abatement order shall:

(1) Identify the equipment.

(2) Demand that the unsafe conditions be corrected within the period set forth in the inspection report.

(3) Set forth the consequences of failure to comply.

b. After the period specified on the inspection report has passed, the labor commissioner may cause a state inspector to verify correction of all unsafe conditions. If reinspection reveals no significant progress toward correcting the unsafe conditions, or the remaining unsafe conditions create significant safety concerns, the labor commissioner may serve a notice of intent to suspend, deny or revoke the operating permit.

c. The labor commissioner may issue an operating permit after receipt of the appropriate fee and verification that each unsafe condition identified in the inspection report has been corrected.

d. If written proof of correction was requested in the abatement order, but adequate proof was not received by the deadline set forth in the abatement order, the labor commissioner may send a second abatement order or cause a state inspector to inspect the conveyance. If the labor commissioner elects to send a second abatement order, it shall notify the owner that, if written proof of abatement is not received within 20 days, a state inspector may be sent to the site. Copies of the abatement order and the inspection report shall be attached to the second abatement order.

e. If a special inspector conducted the inspection, more than 45 days have passed since the deadline for correction of hazards, and an inspection report indicating the hazards are corrected has not been filed, the labor commissioner may contact the special inspector, send a second abatement order to the owner, or send a state inspector to inspect the conveyance. Copies of the abatement order and the inspection report shall be attached to a second abatement order.

f. If an inspection as described in paragraph 71.11(7)*"d"* or *"e"* reveals no significant progress toward correcting the unsafe conditions, and the remaining unsafe conditions create no significant safety concerns, the labor commissioner may extend the time for abatement of the unsafe conditions an additional 10 days or may serve a notice of intent to suspend, deny or revoke the operating permit. The labor commissioner may also post a notice prohibiting use of the conveyance pending abatement of the unsafe conditions listed in the inspection report.

g. Procedures for appeal of a notice of intent to suspend, deny or revoke an operating permit are set forth in 875—Chapter 69.

71.11(8) *Imminent danger.* If the labor commissioner determines that continued operation of a conveyance pending correction of unsafe conditions creates an imminent danger, the labor commissioner shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance contrary to posted notice by the labor commissioner may result in additional legal proceedings pursuant to Iowa Code section 89A.10(3) or 89A.18. The conveyance may be returned to service only after the imminent danger has been corrected and the conveyance has passed a comprehensive inspection.

71.11(9) *Interference prohibited.* No person shall interfere with, delay or impede an inspector employed by the state during an inspection.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 0685C**, IAB 4/17/13, effective 5/22/13]

875—71.12(89A,252J,261,272D) Special inspector commissions.

71.12(1) *Definition.* As used in this rule, "certificate of noncompliance" means:

a. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;

b. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or

c. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

71.12(2) *Qualifications.*

a. Each applicant must possess a high school diploma or general equivalency degree.

b. Each applicant shall have at least three years of full-time work experience in the construction, installation, repair or inspection of conveyances.

c. Each applicant shall be a CEI.

d. Each applicant shall satisfactorily pass a division of labor services examination on Iowa procedures, Iowa policies, and all safety standards adopted by reference.

e. Each applicant shall submit proof of insurance coverage insuring the applicant against liability for injury or death for any act or omission on the part of the applicant. The insurance policy shall be in an amount of not less than $1,000,000 for bodily injury to or death of one person in any one accident, and in an amount of not less than $5,000,000 for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than $100,000 for damage to or destruction of property in any one accident. The insurance coverage of the special inspector's employer shall be considered to comply with this requirement if the coverage provides equivalent coverage for each special inspector.

71.12(3) *Application.* An applicant for a commission shall complete, sign, and submit to the division the form provided by the division with the required fee. The applicant shall include with the application proof that the applicant is a CEI.

71.12(4) *Expiration.* The commission expires when the commission is suspended or revoked by the labor commissioner or one year from issuance, whichever occurs earlier.

71.12(5) *Changes.* The special inspector shall notify the division at the time any of the information on the form or attachments changes.

71.12(6) *Denials.* The labor commissioner may refuse to issue or renew a special inspector's commission for failure of the applicant to complete an application package, if the applicant is not a CEI, or for any reason listed in subrules 71.12(8) to 71.12(10).

71.12(7) *Investigations.* The labor commissioner may investigate for any reasonable cause related to special inspectors or special inspector applicants. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice at the times and in the places the labor commissioner directs. The labor commissioner may notify the organization that certified the special inspector as a CEI of the findings of an investigation.

71.12(8) *Reasons for probation.* The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

71.12(9) *Reasons for suspension.* The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals any of the following:

a. The special inspector failed to submit and report inspections on a timely basis;

b. The special inspector abused the special inspector's authority;

c. The special inspector misrepresented self as a state inspector or a state employee;

d. The special inspector used commission authority for inappropriate personal gain;

e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;

f. The special inspector committed numerous violations as described in subrule 71.12(8);

g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

h. The special inspector is no longer a CEI;

i. The division received a certificate of noncompliance; or

j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs 71.12(9)*"a"* to *"h."*

71.12(10) *Reasons for revocation.* The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

a. The special inspector filed a misleading, false or fraudulent report;

b. The special inspector failed to perform a required inspection;

c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;

d. The special inspector committed repeated violations as described in subrule 71.12(9);

e. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

f. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs 71.12(10)*"a"* to *"e"*;

g. The special inspector is no longer a CEI; or

h. The division received a certificate of noncompliance.

71.12(11) *Procedures.* The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

a. *Notice of actions.* The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A.

b. *Contested cases.* The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. *Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.

d. *Emergency suspension.* Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that the public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

e. *Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

f. *Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.

g. *Revocation period.* A special inspector's commission that has been revoked shall not be reinstated for five years.

h. *Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.

i. *Revoked or suspended commissions.* Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall surrender the special inspector's commission card to the labor commissioner. The labor commissioner may notify the special inspector's employer and the organization that certified the special inspector as a CEI of a revocation or suspension.

[**ARC 7841B**, IAB 6/17/09, effective 7/22/09]

875—71.13(89A) State employees. ASME A17.1, Rule 8.11.1.1, shall not apply to inspectors who were hired before January 2005 and are state employees.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.14(89A) Safety tests. Only safety test reports submitted on approved forms from elevator mechanics who are employed by authorized companies shall be considered to meet the requirements of this rule.

71.14(1) *When safety tests will be performed.*

a. Safety tests shall be performed on new and altered installations before they are placed in service.

b. Safety tests shall be made on all conveyances pursuant to the schedules and procedures set forth in:

(1) The maintenance control plan for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A);

(2) The CCD for conveyances covered by ASME A17.7-2007/CSA B44-07;

(3) ASME A17.1-2010/CSA B44-07, Part 8, (except for Rule 8.11.1.1);

(4) ASME A18.1(2003), Part 10; or

(5) ANSI A10.4-2007, Section 26.4.

71.14(2) *How safety tests will be reported.* Within 30 days after completion of a safety test, the elevator mechanic shall file with the labor commissioner a report on an approved form and shall provide a copy of the form to the owner and to the witness, if applicable.

71.14(3) *How safety tests will be recorded.* The elevator mechanic shall attach a tag showing the date of the test, the elevator mechanic's name, and the type of test performed.

a. On electric traction elevators, the elevator mechanic shall attach the tag to the safety-releasing carrier.

b. On hydraulic elevators, the elevator mechanic shall attach the tag to the disconnecting switch or the controller.

c. On wheelchair lifts, the elevator mechanic shall attach the tag to the disconnecting switch.

d. On other conveyances covered by these rules, the commissioner's designee witnessing the acceptance safety test shall indicate the proper location of the tag. Subsequent test tags shall be attached in the same location.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—71.15(89A) Authorized companies.

71.15(1) Each year, authorized companies shall train their elevator mechanics who perform safety tests on safety test procedures.

71.15(2) For each conveyance owned by an authorized company, the owner shall obtain the services of a CEI who is not employed by the authorized company or an inspector employed by the state to witness the safety test.

71.15(3) To become authorized to perform safety tests, a company shall submit a copy of its procedures for performing safety tests. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

71.15(4) Every five years or within six months after the board adopts a new edition of ASME, whichever is earlier, authorized companies shall submit revised safety test procedures for renewal of authorization. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

71.15(5) Investigations. Investigations shall take place at the times and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

71.15(6) Suspension. If the labor commissioner determines that a falsified safety test report was submitted by an elevator mechanic, the labor commissioner shall suspend the authorization of the elevator mechanic's employer for six months. During the suspension, all safety tests performed by any employee of the authorized company shall be witnessed by a state inspector or a CEI who is not employed by the suspended authorized company.

71.15(7) Suspension procedures.

a. The labor commissioner shall notify an authorized company of its suspension by certified mail or by other service as permitted by Iowa Code chapter 17A.

b. The authorized company shall have 20 days to file a written notice of contest with the labor commissioner. If the authorized company does not file a written notice of contest in a timely manner, the suspension shall automatically be effective. If the authorized company does file a written notice of contest in a timely manner, the hearing procedures in 875—Chapter 1 shall govern.

c. If the labor commissioner finds, pursuant to Iowa Code section 17A.18A, that public health, safety or welfare imperatively requires emergency action, the authorization may be summarily suspended.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.16(89A) Fees. Except as noted in this rule, all fees are nonrefundable and due in advance.

71.16(1) *Operating permits.* The annual operating permit fee shall be $75 per conveyance.

71.16(2) *Periodic inspections.* Fees shall be remitted to the division of labor services within 30 days of the date of inspection. The fees for periodic inspections shall be as follows:

a. Hydraulic elevator: $100.

b. Wind tower lift: $225.

c. Hand-powered elevator: $90.

d. Television tower elevator: $500.

e. Other traction elevator: $150.

f. Escalator: $150.

g. Dumbwaiter: $90.

h. Wheelchair lift: $90.

i. CPH.

(1) Annual: $500.

(2) Quarterly: $200.

j. Moving walk: $150.

71.16(3) *Installation permits.* The fees in this subrule cover the initial print review, installation permit, initial inspection and first-year operating permit. Each print revision submitted to the division shall be subject to an additional fee of $100. The fees for new installations shall be as follows:

a. Wind tower lift: $500.

b. Hydraulic elevator: $750.

c. Traction elevator: $1000.

d. Escalator: $1000.

e. Dumbwaiter: $500.

f. Wheelchair lift: $500.

g. CPH: $500.

h. Moving walk: $500.

71.16(4) *Alteration permits.*

a. The fee for any elevator alteration permit except a CPH extension shall be $500 and shall cover the initial print review, alteration permit, and initial inspection.

b. The fee for each CPH extension shall be $150. The total fee required for all planned CPH extensions shall be submitted with the installation permit application pursuant to subrule 71.5(3).

c. For all other conveyances, the fees for new installations shall apply to alterations.

71.16(5) *Construction permits.* The construction permit fee shall be $200 per conveyance. This fee includes the fee for initial inspection.

71.16(6) *Controller upgrade permits.* The controller upgrade permit fee shall be $250. This fee includes one inspection.

71.16(7) *Consultative inspections.* Consultative inspections may be performed at the discretion of the labor commissioner for $125 per hour, including travel time, with a minimum charge of $250.

71.16(8) *Special inspector commission.* The special inspector commission fee shall be $60 annually.

71.16(9) *Witness of safety tests.* The fee for division employees to witness safety tests shall be $125 per hour, including travel time, with a minimum charge of $250.

71.16(10) *Permit extensions.* The fee to extend an installation permit, alteration permit, or construction permit shall be $100.

71.16(11) *Inspections outside of normal business hours.* Inspections outside the normal business hours may be performed at the discretion of the labor commissioner. If the owner or contractor requests an inspection outside of normal business hours and the labor commissioner agrees to the schedule, an

additional fee will be charged. The additional fee will be calculated at a rate of $200 per hour, including travel time, with a minimum charge of $400.

71.16(12) *Reinspections.* The fees for reinspections are $400 for television tower elevators and CPHs, $200 for wind tower lifts, and $300 for all other conveyances.

71.16(13) *Inspection for temporary removal from service.* The inspection fee for temporary removal from service pursuant to rule 875—71.20(89A) shall be $125 per hour, including travel time, with a minimum charge of $250.

71.16(14) *Fee waiver.* When a state inspector combines in one visit two different types of inspection on a single conveyance, the commissioner may waive the lesser of the fees.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0318C**, IAB 9/5/12, effective 10/10/12; **ARC 0685C**, IAB 4/17/13, effective 5/22/13; **ARC 1158C**, IAB 10/30/13, effective 12/4/13]

875—71.17(89A) Publications available for review. Standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.18(89A) Other regulations affecting elevators. Regulations concerning accessibility of buildings and conveyances available to the public are found at 661—Chapter 302. Regulations governing the safety and health of employees who work in and around elevators are found at 875—Chapters 2 to 26. Iowa Code chapter 91C and 875—Chapter 150 apply to companies that alter and install conveyances. No rule in 875—Chapters 71 to 73 shall be interpreted as creating an exemption, waiver, or variance from any otherwise applicable regulation or statute.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.19(89A) Accidents.

71.19(1) *Reporting the accident.* The owner shall immediately notify the commissioner of each personal injury accident requiring the service of a physician or causing disability exceeding one day or causing damage to the conveyance exceeding $2,000. Notification shall be in writing and shall include the state identification number, owner, and description of accident.

71.19(2) *Securing the accident site pending investigation.* The removal of any part of the damaged conveyance or operating mechanism from the premises is forbidden until permission to do so is granted by the commissioner.

71.19(3) *Putting the conveyance back into operation.* When an accident involves the failure or destruction of any part of the conveyance or its operating mechanism, the use of the conveyance is forbidden until it has been made safe, until it has been reinspected, and until any repairs or alterations have been approved by the commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.20(89A) Temporary removal from service. The requirements for an annual inspection, annual inspection fee, safety test, operating permit, and operating permit fee shall be temporarily suspended for up to three years for an elevator in an unoccupied building if the requirements of this rule are met.

71.20(1) All elevator doors in unoccupied buildings shall be closed and locked. Hydraulic elevators shall be parked at the bottom of the hoistway. Traction elevators shall be parked at the top of the hoistway.

71.20(2) Upon request by the owner of an elevator in an unoccupied building, the labor commissioner shall send an inspector who is a state employee to confirm that the building is unoccupied and that the car and doors of the elevator have been properly secured. If the conditions set forth in subrule 71.20(1) are met, the inspector shall apply to the elevator a seal and a red tag marked with the words "Do Not Operate."

71.20(3) One year after the inspection, the owner must file with the labor commissioner written confirmation that the status of the elevator and building have not changed, and the owner must file again two years after the inspection. Failure to comply with this requirement shall result in termination of the temporary suspension of the requirements for safety tests, inspections, and operating permits.

71.20(4) Prior to returning the elevator to service, and upon request of the owner, the labor commissioner may allow the elevator to be operated for 30 days for the sole purpose of performing safety tests and maintenance.

71.20(5) The owner must notify the labor commissioner at least two weeks before placing an elevator back into service and must arrange for an inspector who is a state employee to witness a safety test.

71.20(6) If at the end of three years the building is still unoccupied, suspension of the requirements for safety tests, inspections, and operating permits shall end without possibility of renewal.

[**ARC 0318C**, IAB 9/5/12, effective 10/10/12]

These rules are intended to implement Iowa Code chapters 89A, 252J, 261 and 272D.

[Filed emergency 12/15/75, Notice 10/6/75—published 12/29/75, effective 12/15/75]
[Filed 7/28/82, Notice 5/26/82—published 8/18/82, effective 9/30/82]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]
[Filed 2/15/01, Notice 10/18/00—published 3/7/01, effective 4/11/01]
[Filed 11/20/01, Notice 6/13/01—published 12/12/01, effective 1/16/02]
[Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 1/1/04]
[Filed 2/10/06, Notice 1/4/06—published 3/1/06, effective 4/5/06]
[Filed 7/3/07, Notice 4/25/07—published 8/1/07, effective 9/5/07]
[Filed 1/25/08, Notice 11/7/07—published 2/13/08, effective 3/19/08]
[Filed emergency 5/28/08—published 6/18/08, effective 5/28/08]
[Filed 5/29/08, Notice 4/23/08—published 6/18/08, effective 7/23/08]
[Filed emergency 6/24/08—published 7/16/08, effective 7/23/08]
[Filed 9/3/08, Notice 6/18/08—published 9/24/08, effective 10/29/08]
[Filed 9/3/08, Notice 7/16/08—published 9/24/08, effective 10/29/08]
[Filed ARC 7840B (Notice ARC 7696B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 7841B (Notice ARC 7697B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 9221B (Notice ARC 8996B, IAB 8/11/10), IAB 11/17/10, effective 12/22/10]
[Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 0318C (Notice ARC 0171C, IAB 6/13/12), IAB 9/5/12, effective 10/10/12]
[Filed ARC 0574C (Notice ARC 0411C, IAB 10/31/12), IAB 2/6/13, effective 3/13/13]
[Filed ARC 0685C (Notice ARC 0597C, IAB 2/6/13), IAB 4/17/13, effective 5/22/13]
[Filed ARC 1159C (Notice ARC 0951C, IAB 8/21/13), IAB 10/30/13, effective 12/4/13]
[Filed ARC 1158C (Notice ARC 1009C, IAB 9/4/13), IAB 10/30/13, effective 12/4/13]

CHAPTER 72
CONVEYANCES INSTALLED ON OR AFTER JANUARY 1, 1975

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 72]

875—72.1(89A) Purpose and scope. This chapter contains safety standards covering the design, construction, installation, operation, inspection, testing, maintenance, alteration and repair of conveyances installed on or after January 1, 1975. The rules of this chapter also apply to previously dormant conveyances that are being reactivated, and to reinstalled or moved conveyances. As used in this rule, the word "installation" refers to the date on which a conveyance contractor enters into a contractual agreement pertaining to a conveyance.

72.1(1) For installations between January 1, 1975, and December 31, 1982, ANSI A17.1 shall mean ANSI A17.1 (1971).

72.1(2) For installations between January 1, 1983, and December 31, 1992:

a. ANSI A17.1 shall mean ANSI A17.1 (1981); and

b. ANSI A117.1 shall mean ANSI A117.1 (1980).

72.1(3) For installations between January 1, 1993, and December 31, 2000:

a. ASME A17.1 shall mean ASME A17.1 (1990) and in addition shall mean the following:

(1) ASME A17.1b (1992), Rule 110.11h, for electric elevators installed between July 1, 1993, and December 31, 2000, and

(2) ASME A17.1b (1992), Rule 110.11h that is referenced by Rule 300.11, for hydraulic elevators installed between July 1, 1993, and December 31, 2000.

b. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1990); and

c. ANSI A117.1 shall mean ANSI A117.1 (1980).

72.1(4) For installations between January 1, 2001, and December 31, 2003:

a. ASME A17.1 shall mean ASME A17.1 (1996 through the 1999 addenda);

b. ASME A18.1 shall mean ASME A18.1 (1999), except Chapters 4, 5, 6, and 7;

c. ANSI A117.1 shall mean ANSI A117.1 (1998); and

d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1999).

72.1(5) For installations between January 1, 2004, and April 4, 2006:

a. ASME A17.1 shall mean ASME A17.1 (2000 through the 2003 addenda);

b. ASME A18.1 shall mean ASME A18.1 (1999 through the 2001 addenda), except Chapters 4, 5, 6, and 7;

c. ANSI A117.1 shall mean ANSI A117.1 (1998); and

d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2002).

72.1(6) For installations between April 5, 2006, and July 22, 2008:

a. ASME A17.1 shall mean ASME A17.1-2004, A17.1a-2005 and A17.1S-2005;

b. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

c. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

72.1(7) For installations between July 23, 2008, and July 18, 2012:

a. ASME A17.1 shall mean ASME A17.1-2007/CSA B44-07;

b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;

c. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

72.1(8) For installations on or after July 19, 2012:

a. ASME A17.1 shall mean ASME A17.1-2010/CSA B44-10, except for Rule 2.27.1.1.6;

b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-10;

c. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2008).

72.1(9) For installations on or after January 31, 2014:

a. ASME A17.1 shall mean ASME A17.1-2010/CSA B44-10, except for Rule 2.27.1.1.6;

b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-10;

c. ASME A18.1 shall mean ASME A18.1 (2011), except Chapters 4, 5, 6, and 7;

d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2008).

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 8759B**, IAB 5/19/10, effective 6/23/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 1232C**, IAB 12/11/13, effective 1/31/14]

875—72.2(89A) Definitions. The definitions contained in ASME A17.1, ASME A18.1, ANSI A117.1, and any other standard adopted herein by reference shall be applicable as used in this chapter to the extent that the definitions do not conflict with the definitions contained in Iowa Code chapter 89A and these rules. However, the definition of "building code" in ASME A17.1 is modified to exclude the Building Construction and Safety Code (NFPA 5000) and the National Building Code of Canada (NBCC) for any installation after March 1, 2008.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—72.3(89A) Accommodating the physically disabled. All passenger elevators installed between January 1, 1975, and December 31, 1982, which are available and intended for public use shall be usable by the physically disabled. All passenger elevators shall have control buttons with identifying features for the benefit of the blind and shall allow for wheelchair traffic. All passenger elevators and wheelchair lifts installed on or after January 1, 1983, which are accessible to the general public shall comply with Accessible and Usable Buildings and Facilities ANSI A117.1, sections 407 and 408.

875—72.4(89A) Electric elevators. The provisions contained in ASME A17.1, part 2, are adopted by reference.

875—72.5(89A) Hydraulic elevators. The provisions contained in ASME A17.1, part 3, are adopted by reference.

875—72.6(89A) Power sidewalk elevators. The provisions contained in ASME A17.1, section 5.5, are adopted by reference.

875—72.7(89A) Performance-based safety code. Conveyances may comply with ASME A17.7, in whole or in part, as an alternative to ASME A17.1.

875—72.8(89A) Hand and power dumbwaiters. The provisions contained in ASME A17.1, sections 7.1, 7.2, 7.3, and 7.8, are adopted by reference.

875—72.9(89A) Escalators and moving walks. The provisions contained in ASME A17.1, part 6, are adopted by reference.

875—72.10(89A) General requirements. The provisions contained in ASME A17.1, part 8, are adopted by reference unless specifically excluded herein.

875—72.11(89A) Acceptance and periodic tests and inspections of elevators, dumbwaiters, escalators and moving walks. Rescinded IAB 6/17/09, effective 7/22/09.

875—72.12(89A) Wind tower lifts. Wind tower lifts authorized by this rule shall not be installed in grain elevators, high-rise buildings, water towers, television towers or any facility other than a wind tower built for the production of electricity. This rule applies to all wind tower lifts, whether installed before or after May 28, 2008; however, this exception shall not apply to a wind tower lift if the contract for its installation is executed after an AECO is accredited.

72.12(1) Wind tower lifts that meet the requirements of subrules 72.12(2) through 72.12(10) are exempt from the requirements of ASME A17.1. This temporary exemption shall terminate for a wind tower lift upon the occurrence of at least one of the following events:

a. Three weeks have passed since the accreditation of at least one AECO, and the manufacturer of the wind tower lift has not filed with the labor commissioner an affidavit attesting that a request for Certificate of Conformance as described by ASME A17.7 (2007) was submitted to an AECO.

b. The AECO has reviewed a request pursuant to ASME A17.7 and refused to issue a Certificate of Conformance for the model or series of lifts.

c. The AECO has determined that modifications to the wind tower lift are necessary, and the modifications have not been made with reasonable diligence.

d. The AECO has determined that modifications to the wind tower lift are necessary, and the labor commissioner determines the wind tower lift is not safe to operate prior to completion of the modifications.

e. The AECO has reviewed an application pursuant to ASME A17.7 and issued a Certificate of Conformance for the model or series of lifts.

72.12(2) A wind tower lift placed in operation on or before May 28, 2008, shall be registered by the owner with the labor commissioner no later than July 1, 2008, and shall pass an installation inspection by inspectors employed by the labor commissioner according to the schedule set by the labor commissioner. The wind tower lift shall receive a periodic inspection by the labor commissioner's inspectors annually thereafter.

72.12(3) The owner of a wind tower lift installed after May 28, 2008, shall register the wind tower lift with the labor commissioner prior to its installation. A wind tower lift installed after May 28, 2008, shall pass an installation inspection by the labor commissioner's inspectors prior to its being placed into operation. The wind tower lift shall receive a periodic inspection by the labor commissioner's inspectors annually thereafter.

72.12(4) Registration pursuant to this rule requires submission of the following information to the labor commissioner:

a. The unique identifier of the wind tower.

b. The name of the wind tower owner and contact information for the owner's representative.

c. The name of the wind tower lift manufacturer and contact information for the manufacturer's representative.

d. The location of the wind farm.

e. Three copies of the prints and design documents that are certified by a professional engineer duly licensed in the state of Iowa and that bear the professional engineer's P.E. stamp for the lifts.

f. The manufacturer's complete test procedures, inspection checklists, operating manual, service manual, and related documents as determined necessary by the labor commissioner.

72.12(5) The owner shall notify the labor commissioner within 30 days of any change in the information provided pursuant to 72.12(4)*"b"* and *"c."*

72.12(6) This subrule establishes reporting requirements in addition to the requirements of rule 875—71.3(89A). The manufacturer of a lift must notify the labor commissioner in writing within one week if one of its wind tower lifts anywhere in the world is involved in a personal injury accident requiring the service of a physician, a personal injury accident causing disability exceeding one day or death, or an incident causing property damage exceeding $2,000. The notification shall specifically identify the model number, serial number, and owner of the lift, and a description of the incident or accident. The labor commissioner shall determine and require necessary inspections, tests, changes or enhancements to prevent a similar incident or accident in this state.

72.12(7) Wind tower lifts must comply with 29 CFR 1910.

72.12(8) The manufacturer shall notify the labor commissioner within seven days of notification to the manufacturer that an AECO has:

a. Issued a Certificate of Conformance for the model or series of wind tower lifts,

b. Refused to issue a Certificate of Conformance for the model or series of wind tower lifts, or

c. Determined that modifications to the wind tower lifts are necessary.

72.12(9) Wind tower lifts shall pass an inspection covering the following criteria:

a. Ascending speed, descending speed, and emergency descending speed shall not exceed the manufacturer's recommendations.

b. Stop switch, interior lighting, cage entry door, door contact, operating controls and remote operating controls shall operate according to manufacturer's recommendations.

c. Interior floor and cage framework shall appear to be structurally sound.

d. Enclosure signage recommended by the manufacturer shall be in place.

e. Manufacturer's data plate shall be visible.

f. Hoisting mechanism shall appear to be structurally sound and intact from inside and outside the car.

g. Guide shoes shall appear to be structurally sound and undamaged.

h. Suspended power cords and strain relief devices shall reveal no visible damage.

i. Upper and lower normal and final limits shall operate according to the manufacturer's recommendations.

j. Overspeed device shall successfully pass a full-load test.

k. Overload device shall successfully pass an overload test according to the manufacturer's recommendations.

l. Wire rope, safety rope, and guide rope shall show no evidence of wear.

m. Guide rope attachments, suspension attachment beam, beam tower attachments, suspension rope attachment, suspension rope secondary attachment (if present), and guide wire rope attachments shall show no evidence of wear or fatigue.

n. The wind tower lift shall not drift when subjected to a static full load.

o. Maintenance logs, tags, and other necessary documentation shall be available in sufficient detail to establish that maintenance is occurring pursuant to the manufacturer's schedule.

p. Guide rope tension device, safety rope tension device, and suspension rope tension device shall pass a visual test for proper tension.

q. Power cord catch basket shall pass a visual inspection.

r. Safety set distance, overspeed trip speed, overload limit setting, and maximum overload allowed shall not exceed manufacturer's recommendations.

s. A communication device, if installed in the car, shall be operable.

t. Any other items on the manufacturer's recommended inspection checklist shall pass inspection.

72.12(10) The owner or owner's representative shall provide weights as needed to perform necessary tests during inspections.

875—72.13(89A) Alterations, repairs, replacements and maintenance.

72.13(1) *General.* All maintenance, repairs, replacements, and alterations shall comply with ASME A17.1-2007/CSA B44-07 or ASME A17.7-2007/CSA B44-07, as applicable, except as noted in 875—subrules 73.8(3) and 73.8(4). Rule 875—71.10(89A) describes alterations which require that the entire conveyance be brought into compliance with the most current codes.

72.13(2) *Exemption for button renumbering.* All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2003), except for Rule 407.4.6.2.2.

72.13(3) *Sump pump exemption.* The provisions of ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.2.2, that require a pit sump or drain shall not apply to an elevator alteration when all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. There is evidence that groundwater has not entered the pit previously.

d. The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.

e. A description of alternative means to maintain the pit in a dry condition is provided to the labor commissioner with the alteration permit application.

f. The labor commissioner approves the alternative means to maintain the pit in a dry condition.

g. The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

72.13(4) *Pit excavation exemption.* The full length of the platform guard set forth in ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.15.9.2(a), shall not be required if all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.

d. The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

72.13(5) *Sprinkler retrofits and shunt trip breakers.* When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

a. The installation shall comply with the applicable version of ASME A17.1, Rule 2.8.3.3.

b. The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.

c. The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of rule 875—72.13(89A), the relevant subrule of 875—72.1(89A) shall apply based on the date the sprinkler is installed instead of the date the conveyance was installed.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—72.14(89A) Design data and formulas. Rescinded IAB 11/26/03, effective 1/1/04.

875—72.15(89A) Power-operated special purpose elevators. The provisions contained in ASME A17.1, section 5.7, are adopted by reference.

875—72.16(89A) Inclined and vertical wheelchair lifts. The provisions contained in ASME Safety Standard for Platform Lifts and Stairway Chairlifts A18.1, sections 1, 2, 3, 8, 9, and 10, are adopted by reference for all inclined and vertical wheelchair lifts.

875—72.17(89A) Hand-powered elevators. Hand-powered elevators shall not be installed after January 1, 1983.

875—72.18(89A) Accommodating the physically disabled. Renumbered as 875—72.3(89A), IAB 11/26/03, effective 1/1/04.

875—72.19(89A) Limited-use/limited-application elevators. The provisions contained in ASME A17.1, section 5.2, are adopted by reference.

875—72.20(89A) Rack and pinion, screw-column elevators. The provisions contained in ASME A17.1, sections 4.1 and 4.2, are adopted by reference.

875—72.21(89A) Inclined elevators. The provisions contained in ASME A17.1, section 5.1, are adopted by reference.

875—72.22(89A) Material lift elevators. Material lifts existing at a location prior to January 1, 1975, are not regulated or inspected by the labor commissioner.

875—72.23(89A) Elevators used for construction. The provisions contained in ASME A17.1, section 5.10, are adopted by reference only as they pertain to elevators utilizing permanent equipment in a permanent location.

875—72.24(89A) Construction personnel hoists. The provisions of American National Standards Institute (ANSI) A10.4-2007 are adopted by reference for construction personnel hoists as defined by ANSI A10.4-2007. Notwithstanding the ANSI definition, these conveyances may be used only temporarily during construction.

875—72.25(89A) Alarm bell. An automatic passenger elevator shall be provided with an alarm bell that is activated by a switch marked "ALARM" located in or adjacent to the car operating panel. The alarm bell shall be audible inside the car and outside the hoistway.

[**ARC 0950C**, IAB 8/21/13, effective 9/25/13]

These rules are intended to implement Iowa Code chapter 89A.

[Filed emergency 12/15/75, Notice 10/6/75—published 12/29/75, effective 12/15/75]
[Filed 7/28/82, Notice 5/26/82—published 8/18/82, effective 9/30/82]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]
[Filed 2/15/01, Notice 10/18/00—published 3/7/01, effective 4/11/01]
[Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 1/1/04]
[Filed 2/10/06, Notice 1/4/06—published 3/1/06, effective 4/5/06]
[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed 7/3/07, Notice 4/25/07—published 8/1/07, effective 9/5/07]
[Filed 12/11/07, Notice 10/24/07—published 1/2/08, effective 2/6/08]
[Filed emergency 5/28/08—published 6/18/08, effective 5/28/08]
[Filed 5/29/08, Notice 4/23/08—published 6/18/08, effective 7/23/08]
[Filed 9/3/08, Notice 6/18/08—published 9/24/08, effective 10/29/08]
[Filed ARC 7840B (Notice ARC 7696B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 8759B (Notice ARC 8622B, IAB 3/24/10), IAB 5/19/10, effective 6/23/10]
[Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 0950C (Notice ARC 0753C, IAB 5/29/13), IAB 8/21/13, effective 9/25/13]
[Filed ARC 1232C (Notice ARC 1108C, IAB 10/16/13), IAB 12/11/13, effective 1/31/14]

CHAPTER 73
CONVEYANCES INSTALLED PRIOR TO JANUARY 1, 1975

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 73]

875—73.1(89A) Scope and definitions.

73.1(1) This chapter establishes minimum safety standards for all conveyances installed prior to January 1, 1975, except material lift elevators. Conveyances installed on or after January 1, 1975, shall conform with the requirements set forth in 875—Chapter 72. Material lift elevators installed prior to January 1, 1975, are not subject to regulation pursuant to Iowa Code section 89A.2.

73.1(2) The definitions contained in ASME (1971) shall be applicable as used in this chapter to the extent that they do not conflict with the definitions contained in Iowa Code chapter 89A or 875—Chapter 71.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.2(89A) Hoistways.

73.2(1) Each passenger elevator hoistway landing shall be protected with a door or gate. The door or gate shall be of solid construction and shall guard the entire entrance.

73.2(2) All automatic passenger elevators with power doors shall have nonvision panels on hoistway doors.

73.2(3) Each hoistway landing in any elevator hoistway shall be continuously provided with a properly working door or gate.

73.2(4) Where freight elevator hoistway doors or gates are of open or lattice construction, they shall be at least 6 feet high and shall come within 2 inches of the floor when closed. Gates shall be constructed to reject a ball 2 inches in diameter. Doors and gates must be able to withstand 250 pounds of pressure applied in the center of the door or gate without breaking or being forced out of their guides.

73.2(5) Manually operated biparting entrances of elevators which can be operated from the landings shall be provided with pull straps on the inside and outside of the upper panel where the lower edge of the upper panel is more than 6 feet 6 inches above the landing when the panel is in the fully opened position.

73.2(6) All freight elevators having wooden hoistway gates in an area where power loading equipment, such as fork trucks, electric mules, etc. are used shall have an acceptable means to restrain the power equipment from running through such wooden gates.

73.2(7) Each hoistway door or gate shall be provided with interlocks designed to prevent the car from moving unless the doors or gates are closed. Where doors or gates do not lock when closed they shall lock when the elevator is not more than 12 inches away from the floor. Passenger elevator hoistway doors shall be closed and locked before the car leaves the floor.

73.2(8) All hoistway-door interlocks shall function as part of a hoistway-unit system.

73.2(9) Automatic fire doors shall not lock any landing opening in the hoistway enclosure from the hoistway side nor lock any exit leading from any hoistway landing to the outside of the building.

73.2(10) Emergency keys for hoistway doors and service keys shall be kept readily accessible to authorized persons and elevator safety inspectors.

73.2(11) Access means shall be provided at one upper landing to permit access to the top of the car, and at the lowest landing if this landing is the normal point of access to the pit.

73.2(12) Each hoistway door or gate which is counterweighted shall have its weights enclosed in a box-type guide or run in metal guides. The bottom of the guides or boxes shall be so constructed as to retain the counterweight if the counterweight suspension means breaks.

73.2(13) Hoistways containing freight elevators shall be fully enclosed. Enclosures shall be unperforated to a height of 6 feet above each floor or landing and above the treads of adjacent stairways. Unperforated enclosures shall be so supported and braced as to deflect not over 1 inch when subjected to a force of 100 pounds applied horizontally to any point. Open work enclosure may be used above the 6-foot level and shall reject a ball 2 inches in diameter.

73.2(14) Hoistways containing passenger elevators shall be fully enclosed and the enclosure shall be of solid construction to its full height.

73.2(15) All elevators that have automatic leveling, inching or teasing devices and that are configured with landing sills that project into the hoistway shall be equipped with a bevel on the underside of the landing sill or the underside of projections found on the bottom section of vertically opening biparting doors. Bevels shall be constructed of smooth concrete or not less than 16-gauge metal securely fastened to the hoistway entrance. Bevels shall extend the full depth of the leveling zone plus 3 inches.

73.2(16) Every hoistway window opening seven stories or less on an outside wall above a thoroughfare and every such window three stories or less above a roof of the building or of an adjacent building shall be guarded to prevent entrance by fire or emergency rescue persons. Each such window shall be marked "hoistway" in a readily visible manner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.3(89A) Car enclosure: Passenger.

73.3(1) Each passenger car shall be fully enclosed except on the sides used for entrance and exit. The enclosure shall be of solid construction. Grillwork at the top of the sides shall not be more than 8 inches high. If the car is provided with a solid door and there is no grillwork in the enclosure, adequate means of ventilation shall be provided.

73.3(2) Each passenger car enclosure shall have a top constructed of solid material. The top shall be capable of sustaining a load of 300 pounds on any area of 2 feet on a side and 100 pounds applied at any point. Simultaneous application of these loads is not required.

73.3(3) Passenger car enclosure tops shall have an emergency exit with cover. Opening size shall be as set forth in ANSI A17.1, 1971, Rule 204.1E. Hydraulic elevators provided with a manual lowering valve are not required to provide an emergency exit.

73.3(4) Each passenger car shall have a door or gate at each entrance. Doors or gates shall be of the horizontally sliding type. Doors shall be of solid construction. Gates shall be of the collapsible type. Gates and doors shall conform to ANSI A17.1, 1971, Rule 204.4.

73.3(5) Each passenger car door or gate shall have an electric contact to prevent the car from running with doors or gates open. EXCEPTIONS:

a. By a car-leveling or truck-zoning device.

b. By a combination hoistway access switch and operating device.

c. When a hoistway access switch is operated.

73.3(6) All automatic passenger elevators with power doors shall have reopening devices on the doors, designed to reopen doors in the event the doors should become obstructed.

73.3(7) Car door or gate closing force.

a. Where a car door or gate of an automatic or continuous-pressure operation passenger elevator is closed by power, or is of the automatically released self-closing type, and faces a manually operated or self-closing hoistway door, the closing of the car door or gate shall not be initiated unless the hoistway door is in the closed position. The closing mechanism shall be so designed that the force necessary to prevent closing of a horizontally sliding car door or gate from rest shall be not more than 30 pounds.

b. Paragraph 73.3(7)*"a"* does not apply when both of the following conditions are met:

(1) A car door or gate is closed by power through continuous pressure of a door-closing switch or the car operating device, and

(2) The release of the closing switch or operating device will cause the car door or gate to stop or to stop and reopen.

73.3(8) Each passenger car shall have lighting inside the enclosure of not less than 5 foot-candles. Bulbs and tubes shall be guarded to prevent breakage.

73.3(9) Each passenger elevator shall have a capacity plate prominently displayed in its enclosure. The capacity plate shall list its capacity in pounds.

73.3(10) All passenger elevator car floors shall be maintained so that persons are not exposed to the hazards of tripping or falling.

73.3(11) All automatic passenger elevators shall be provided with an alarm bell capable of being activated from inside the car and audible outside the hoistway. If the elevator is not equipped with a bell,

a two-way conversation device to the elevator and a ready accessible point outside the hoistway may be acceptable.

73.3(12) All automatic passenger elevators shall have their door open zones adjusted so that the door shall not open unless the car has stopped within 6 inches of floor level.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.4(89A) Car enclosure: Freight.

73.4(1) Each freight elevator car shall have a solid enclosure at least 66 inches in height. The space between the solid section and the car top shall be enclosed with solid material, perforated material, or latticework. Where used, perforated material or latticework shall reject a ball 1½ inches in diameter. The portion of open-type enclosure which passes the counterweights shall be of solid construction the entire width of the counterweights plus 6 inches on either side. The enclosure top shall be provided with an emergency exit, except for hydraulic elevators with manual lowering valves.

73.4(2) Each freight car enclosure shall have doors or gates at each entrance and shall be not less than 6 feet high. Each door or gate shall be constructed in accordance with ANSI A17.1, 1971, Rule 204.4.

73.4(3) Each car door or gate on a freight elevator shall have electric contacts to prevent the car from running with doors or gates open. EXCEPTIONS:

a. By a car-leveling or truck-zoning device.

b. By a combination hoistway access switch and operating device.

c. When a hoistway access switch is operated.

73.4(4) Each freight elevator car enclosure shall be provided with a top. The top may be of solid or open-work construction and shall be of metal. The openwork shall reject a ball 2 inches in diameter. Car tops shall be constructed to sustain a load of 200 pounds applied at any point on the car top. The top shall not have hinged or folding panels other than the emergency exit cover.

73.4(5) Each freight car enclosure shall have lighting not less than 2½ foot-candles. Bulbs or tubes shall be guarded to prevent breakage.

73.4(6) Each freight car enclosure shall have capacity plate, loading class plates, and a "No Passenger" sign conspicuously posted. Letters shall be not less than ½-inch high.

73.4(7) Freight elevators shall not be loaded to exceed the rated load as stated on their capacity plates.

73.4(8) Each freight elevator car floor shall be maintained so that personnel will not readily slip or trip. The floor shall be maintained so that it will hold its rated load without breaking through at any place in the car.

73.4(9) Freight elevators shall not be permitted to carry passengers other than the operator and persons to load and unload material.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.5(89A) Brakes.

73.5(1) Each electric elevator shall be provided with an electric brake.

73.5(2) Each brake shall be of the friction type applied by a spring or springs or gravity and released electrically. The brake shall be capable of holding the car at rest with its rated load.

875—73.6(89A) Machines.

73.6(1) Friction gearing or clutch mechanisms shall not be used for connecting the drum or sheaves to the main driving mechanism.

73.6(2) Set screw fastenings shall not be used on power elevators in lieu of keys or pins on connections subject to torque or tension.

73.6(3) Portable power-chain or cable hoist machines shall not be used to raise or lower an elevator car.

73.6(4) No belt or chain driven power machine shall be used for any elevator unless the machine is provided with a broken belt or broken chain safety switch of the electrical nonautomatic reset type. EXCEPTION: Hydraulic machines.

875—73.7(89A) Electrical protective devices.

73.7(1) All electric elevators shall have a labeled emergency stop switch. The switch shall be located on or adjacent to the operating panel.

73.7(2) All electric elevators shall have upper and lower final limit switches. Open-type switches shall not be accepted. Drum-type machines shall have final limit switches mounted on the machine and hoistway final limit switches.

73.7(3) All operating devices of car switch operations shall automatically return to the stop position and latch there when released.

73.7(4) Tiller-rope operations shall not be used unless all direction switches on controllers are mechanically operated. Contacts on direction switches shall be broken when the rope is at the centered position.

73.7(5) Except for firefighter service switches, leveling switches, and truck zone switches, no elevator shall be provided with a switch or device which makes more than one door or gate switch inoperative at any one time.

73.7(6) No person at any time shall make any required safety device or electrical protective device inoperative, except where necessary during tests, inspections or maintenance. Such devices shall be restored to their normal operating conditions as soon as all tests, inspections and maintenance have been completed. The conveyance shall not be left unattended while any of these devices are inoperative. To ensure that no jumpers are left behind, a counting system shall be utilized.

73.7(7) Each winding drum machine shall be provided with an electrical switch which shall disconnect power to the hoisting motor and brake when ropes are slackened.

73.7(8) No person shall enter an elevator pit for any reason without disconnecting power to the equipment using the pit stop switch, lockout, tagout procedures, or other appropriate means of de-energization in accordance with 875—Chapters 2 to 26.

73.7(9) Elevators having a polyphase AC power supply shall be provided with means to prevent the starting of the elevator drive motor or door motor if a reversal of phase rotation, or phase failure of the incoming polyphase AC power, will cause the elevator car or elevator door(s) to operate in the wrong direction.

73.7(10) All electrical equipment in the machine room shall be grounded and shall conform to ANSI C1-1975 (NFPA 70-1975).

73.7(11) All electrical wiring in the machine room and hoistway shall be enclosed in metal conduit, flexible conduit or metal raceways.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.8(89A) Maintenance, repairs and alterations.

73.8(1) *General.* All maintenance, repairs and alterations shall comply with ASME A17.1-2007/CSA B44-07 or ASME A17.7-2007/CSA B44-07, as applicable, except as noted in subrules 73.8(3) and 73.8(4). Rule 875—71.10(89A) describes alterations which require that the entire conveyance be brought into compliance with the most current code.

73.8(2) *Exemption for button numbering.* All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2003), except for Rule 407.4.6.2.2.

73.8(3) *Sump pump exemption.* The provisions of ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.2.2, that require a pit sump or drain shall not apply to an elevator alteration when all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. There is evidence that groundwater has not entered the pit previously.

d. The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.

e. A description of alternative means to maintain the pit in a dry condition is provided to the labor commissioner with the alteration permit application.

f. The labor commissioner approves the alternative means to maintain the pit in a dry condition.

g. The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

73.8(4) *Pit excavation exemption.* The full length of the platform guard set forth in ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.15.9.2(a), shall not be required if all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.

d. The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

73.8(5) *Sprinkler retrofits and shunt trip breakers.* When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

a. The installation shall comply with the applicable version of ASME A17.1, Rule 2.8.3.3.

b. The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.

c. The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of rule 875—73.8(89A), the relevant subrule of 875—72.1(89A) shall apply based on the date the sprinkler is installed instead of the date the conveyance was installed.

73.8(6) *Safety bulkheads.*

a. ASME A17.1-2007, Rule 8.6.5.8, requires either:

(1) A safety bulkhead conforming to ASME A17.1-2007, Rule 3.18.3.4;

(2) Car safeties conforming to ASME A17.1-2007, Rule 3.17.1, and guide rails, guide rail supports and fastenings conforming to ASME A17.1-2007, Rule 3.23.1; or

(3) A plunger gripper conforming to ASME A17.1-2007, Rule 3.17.3, and set to grip when the applicable maximum governor tripping speed in ASME A17.1-2007, Table 2.18.2.1, is achieved.

b. The deadline for compliance with ASME A17.1-2007, Rule 8.6.5.8, is July 1, 2011.

c. Documentation from the manufacturer establishing that a safety bulkhead was installed shall establish compliance with this rule.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.9(89A) Machine rooms.

73.9(1) All means of access to elevator machine rooms shall be of a permanent nature and shall be constructed and maintained in a clear and unobstructed manner.

73.9(2) The elevator machine and control equipment shall be located in a separate room or separated from other equipment by a substantial grill not less than 6 feet high. The grill shall be of a design that will reject a ball 2 inches in diameter. All rooms or enclosures shall have a self-closing and self-locking door.

73.9(3) All elevator machine rooms shall be provided with a floor. The floor shall cover the entire area of the machine room and hoistway.

73.9(4) Machine room floors shall be kept clean and free of grease and oil. Articles or materials not necessary for the maintenance or operation of the elevator shall not be stored therein. Storage of any equipment or materials in elevator machine rooms other than equipment directly related to elevator operation is prohibited.

73.9(5) Lighting in the machine room shall be not less than 10 foot-candles at floor level.

73.9(6) Where there is more than one machine in a room, each machine shall have a different number conspicuously marked on it. The controller, disconnecting means and relay panels for each machine shall be conspicuously numbered to correspond to the machine they control.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.10(89A) Pits.

73.10(1) All pits shall be kept clean and free of equipment or material not relating to the operation of the elevator. EXCEPTION: sump pumps.

73.10(2) Buffers under cars and counterweights shall be permanently fastened to the floor or their supporting beams.

73.10(3) All elevators shall have counterweight guards. Guards shall be of unperforated metal of at least the strength of or braced to the equivalent strength of number 14-gauge sheet steel. Guards shall extend from a point not more than 12 inches above the pit floor to a point not less than 7 feet above the pit floor. Where guards are not feasible, warning chains shall be installed on the bottom of the counterweights and shall extend no less than 5 feet below the counterweight. Chains shall be of a number 10 U.S. gauge wire or of equal size. EXCEPTION: When compensating chains or ropes are used, a counterweight guard is not required.

73.10(4) Buffers shall be installed where elevator pits are not provided with buffers and where the pit depth will permit. Buffers shall comply with ANSI A17.1, 1971, Section 201.

73.10(5) Where the depth of any pit is in excess of 4 feet it shall have a ladder permanently installed. The ladder shall extend not less than 30 inches above the sill of the access door, or hand grips shall be provided to the same height. Ladder shall be of noncombustible material.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.11(89A) Counterweights.

73.11(1) Broken or cracked sections of counterweights shall be replaced.

73.11(2) Counterweight hanger rods, tie rods or both shall firmly support and secure the counterweight sections in place.

73.11(3) Wire ropes extending through counterweights from one stack to another shall be guarded by metal sleeves attached to the wire ropes. Stacks shall not be spaced less than 8 inches apart.

875—73.12(89A) Car platforms and car slings.

73.12(1) All platforms shall be soundly constructed without cracks or breaks in stringers or frames. All floors shall be free of holes.

73.12(2) All car slings shall be soundly constructed and free of cracks or breaks.

73.12(3) Where cable sheaves are used on the crosshead, they shall be firmly attached and free of cracks or breaks.

73.12(4) All elevators shall have data plates attached to the crosshead.

73.12(5) All elevators with automatic leveling, inching or teasing devices shall have a platform guard or an apron. All other elevators shall have warning chains hung within 2 inches of the edge of the platform on the entrance sides. Chains shall be of number 10 U.S. gauge wire or of equal size. Chains shall extend not less than 5 feet below the platform and shall not be spaced more than 4 inches apart.

73.12(6) All car slings shall have guide shoes at the top and bottom of the sling. Shoes that are worn to a degree which affect the safe operation of the car shall be repaired or replaced.

875—73.13(89A) Means of suspension.

73.13(1) Suspension ropes on drum-type machines shall have not less than one turn of the rope on the drum when the car is resting on the fully compressed buffers.

73.13(2) Winding drum machines shall not be used unless they are provided with not less than two hoisting ropes. Each counterweight stack shall be provided with not less than two ropes.

73.13(3) Tiller cables on cable-operated elevators shall be kept free of breaks.

73.13(4) On tiller-cable operations, the cable shall pass through a guiding or stopping device mounted on the car. The cable shall be provided with adjustable stop balls and be provided with means to lock and hold the car at a floor. Stop balls at top and bottom shall be adjusted to automatically stop the car. The tiller cable shall be completely enclosed in the hoistway.

73.13(5) All hoisting or counterweight ropes located outside of the hoistway that are exposed shall be covered with a box-type guard. The guard shall be not less than 6 feet high from floor level.

73.13(6) Roller chains shall not be used as the suspension means for any conveyance except where specifically allowed by an applicable provision of ASME A17.1.

73.13(7) Hoisting ropes for power elevators shall not be less than 3/8 inch in diameter.

73.13(8) Hoisting rope fastening means shall be of the socket and babbitting type. Clamps shall not be used.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.14(89A) Car safeties and speed governors.

73.14(1) Each elevator suspended by ropes shall be provided with mechanically applied car safeties which shall be capable of stopping and sustaining its rated load.

73.14(2) Broken rope or slack rope safeties may be allowed if the car speed is not in excess of 50 FPM.

73.14(3) Elevators which are provided solely with broken rope or slack rope safeties shall not be used for passenger service. EXCEPTION: Handicapped restricted use elevators.

73.14(4) All safeties shall be adjusted so that clearances from the rail shall be in accordance with ANSI A17.1, 1971, Rule 1001.2.

73.14(5) All slack cable safeties shall be provided with an electrical switch which disconnects power to the elevator machine and brake when setting of the safeties occurs.

73.14(6) All safeties operated by a speed governor shall be provided with a speed switch operated by the governor when used with type B or C car safeties on elevators having a rated speed exceeding 150 FPM. A switch shall be provided on the speed governor when used with a counterweight safety for any car speed.

73.14(7) Speed governors shall have their means of speed adjustment sealed.

73.14(8) For hoistways not extending to the lowest floor and where space below the hoistway is used for a passageway or is occupied by persons, or if unoccupied but not secured against unauthorized access, the counterweights of the elevator shall be provided with safeties. Safeties shall be tripped by a speed governor if the car speed is in excess of 150 FPM. Speed governors shall be set to trip above the car governor tripping speed but not more than 10 percent greater.

73.14(9) Access to a governor that is located inside a hoistway shall be provided in accordance with ASME A17.1-2007, Rule 2.7.6.3.4.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 8760B**, IAB 5/19/10, effective 6/23/10]

875—73.15(89A) Guide rails.

73.15(1) All guide rails and brackets whether of wood or steel shall be firmly and securely anchored or bolted in place. Where T rail is used, all fish-plate bolts shall be tight. This shall comply with ANSI A17.1, 1981, Section 200.

73.15(2) Where guide rails which are worn to such a point that proper clearance of safety jaws cannot be maintained, the worn sections shall be replaced to achieve clearances as specified in ANSI A17.1, 1971, Rule 1001.2.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.16(89A) Existing hydraulic elevators.

73.16(1) Cylinders of hydraulic-elevator machines shall be provided with a means for releasing air or other gas.

73.16(2) Each pump or group of pumps shall be equipped with a relief valve conforming to the following requirements:

a. *Type and location.* The relief valve shall be located between the pump and the check valve and shall be of such a type and so installed in the bypass connection that the valve cannot be shut off from the hydraulic system.

b. *Setting.* The relief valve shall be preset to open at a pressure not greater than that necessary to maintain 125 percent of working pressure.

c. *Size.* The size of the relief valve and bypass shall be sufficient to pass the maximum rated capacity of the pump without raising the pressure more than 20 percent above that at which the valve opens. Two or more relief valves may be used to obtain the required capacity.

d. *Sealing.* Relief valves having exposed pressure adjustments, if used, shall have their means of adjustment sealed after being set to the correct pressure.

EXCEPTION: No relief valve is required for centrifugal pumps driven by induction motors, provided the shut-off, or maximum pressure which the pump can develop, is not greater than 135 percent of the working pressure at the pump.

73.16(3) Storage and discharge tanks shall be covered and suitably vented to the atmosphere.

73.16(4) Hydraulic elevators shall be governed by the rules contained in Chapter 73 that apply to electric elevators except the following rules which are exempt: 73.5, 73.6(3), 73.7(2), 73.7(4), 73.7(7),73.9(9), 73.10(3), 73.11, 73.13, and 73.14.

73.16(5) Rescinded IAB 3/7/01, effective 4/11/01.

875—73.17(89A) Existing sidewalk elevators.

73.17(1) Hoistways shall be permanently enclosed. The enclosures shall conform to ANSI A17.1, 1971, Rule 401.1.

73.17(2) All interior landings shall have a door or gate which shall be provided with an interlock.

73.17(3) Doors opening in sidewalks or other areas exterior to the building shall be of the hinged type. Doors or covers shall be designed to hold a static load of 300 pounds per square foot. Doors shall always be closed unless elevator is at the landing.

73.17(4) Stops shall be provided to prevent the cover in the opening of the sidewalk from opening more than 90 degrees from its closed position.

73.17(5) Covers in sidewalk shall be designed to close when the car descends from the top landing.

73.17(6) Recesses or guides which will securely hold the cover in place on the car stanchions shall be provided on the underside of the cover.

73.17(7) All electrical wiring shall be enclosed in metal conduit, flexible conduit or metal raceways. If hoistway opens in the sidewalk, the wiring shall be weatherproof.

73.17(8) Operating devices and control equipment shall comply with ANSI A17.1, 1971, Rule 402.4.

73.17(9) All electric sidewalk elevators shall have upper and lower final limit switches. Open-type switches shall not be allowed.

73.17(10) Cars shall have enclosures which shall be not less than 6 feet in height provided the stanchions and bow iron are of sufficient height. The enclosure shall be provided with electric contacts to prevent the car from running with doors or gates open.

73.17(11) Cars shall have safeties. Where the speed of the elevator does not exceed 50 FPM, car safeties which operate as a result of breaking or slackening of the hoisting ropes may be used. Such safeties may be of the inertia type or approved type without governors. Governors shall not be required when car speed does not exceed 50 FPM.

73.17(12) Car enclosures and car gates shall not be required for hand-powered sidewalk elevators.

73.17(13) Rescinded IAB 3/7/01, effective 4/11/01.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.18(89A) Existing hand elevators.

73.18(1) Hand-powered elevators shall have hoistway doors. Doors shall be of the self-closing and self-locking type.

73.18(2) A sign reading "Danger—Elevator Hoistway—Keep Closed" shall be mounted on each hoistway door. The letters on the signs shall be legible, shall be at least 2 inches high, and shall contrast with the background color.

73.18(3) All hand-powered elevators shall be provided with safeties or slack cable devices. Safeties do not have to be operated by a speed governor unless the speed is in excess of 50 FPM.

73.18(4) Hand-powered elevators shall have a car enclosure which shall be constructed of metal or sound seasoned wood. The enclosure shall cover all sides which are not used for entrance or exit. The

enclosure shall be secured to the car platform or frame in such a manner that it cannot work loose or become displaced in ordinary service.

73.18(5) Each hand-powered elevator shall be provided with a brake which shall be capable of stopping and sustaining the car whether loaded or unloaded.

73.18(6) Hand-powered elevators shall not be converted or changed to electric powered unless the complete conveyance is brought into conformity with 875—Chapter 72.

73.18(7) Rescinded IAB 3/7/01, effective 4/11/01.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.19(89A) Power-operated special purpose elevators.

73.19(1) Elevators complying with the following requirements may be installed in any structure where the elevator is not accessible to the general public, is used exclusively for designated operating and maintenance employees only, and where transportation of one or two persons is required to attend machinery or equipment frequently.

73.19(2) The inside platform area of the car shall not exceed 9 square feet. The rated speed shall not exceed 100 FPM. The rated load shall not exceed 650 pounds.

73.19(3) Hoistways shall be enclosed to their full width, to a height of not less than 7 feet with solid or perforated noncombustible material braced to deflect not more than 1 inch when subjected to a force of 100 pounds applied horizontally at any point. Open work enclosures shall be at least number 13 steel wire gauge or expanded metal at least number 13 U.S. gauge and shall reject a ball 2 inches in diameter. Where counterweights pass, landing and stairway side shall be of solid construction.

73.19(4) Wiring shall comply with the requirements of the National Electrical Code, ANSI C1-1975 (NFPA 70-1975).

73.19(5) Counterweights shall comply with rule 875—73.11(89A).

73.19(6) Hoistway doors shall comply with subrules 73.2(1), 73.2(7) and 73.2(11).

73.19(7) Cars shall be solidly constructed in accordance with subrules 73.12(1) and 73.12(2).

73.19(8) Car enclosure.

a. Except at the entrance, the car shall be enclosed on all sides and the top. The enclosure at the sides shall be solid or openwork. All openwork shall reject a ball 1 inch in diameter. The enclosure shall be constructed of sufficient strength that it will not deflect more than 1 inch at any one point.

b. There shall be an electric light to illuminate the car or hoistway with the switch placed on or near the operating panel.

c. There shall be no glass used in the elevator car except for the car light.

73.19(9) A car door shall be provided at each car entrance. Door or gate shall guard the complete entrance. The door or gate shall be at least 7 feet high, of metal construction with solid or open construction to reject a ball 1 inch in diameter. A contact switch shall be provided to prevent the operation of the elevator with doors or gates open. The door or gate shall be provided with interlocks.

73.19(10) Guide rails shall comply with rule 875—73.15(89A).

73.19(11) The means and methods of suspension shall comply with subrules 73.13(1), 73.13(5), 73.13(6), 73.13(7), and 73.13(8).

73.19(12) Electrical switches shall comply with subrules 73.7(2) and 73.7(9).

73.19(13) Brakes shall comply with rule 875—73.5(89A).

73.19(14) Emergency signal or communication shall comply with subrule 73.3(11).

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.20(89A) Inclined and vertical wheelchair lifts. All vertical and inclined wheelchair lifts shall conform to ANSI A17.1 (1981), part XX, sections 2000 and 2001.

875—73.21(89A) Handicapped restricted use elevators. All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V. Permits will be reissued only for locations where other elevators do not exist and where the absence of the elevator would deprive a known group of physically disabled individuals use of the building. Additionally, the elevators shall comply with the following limitations:

1. The elevator shall be used only by a maximum of one disabled person and one attendant at a time. Where a disabled individual cannot operate the elevator in a manner which will ensure access to all operating controls and safety features, an attendant shall accompany the disabled individual.

2. The elevator shall be key-operated and shall not be capable of being called by buttons or switches but may be called by a key operator.

3. Keys to operate the elevator shall be in the control of the disabled person, the attendant or persons in positions of responsibility at the location.

4. A list shall be maintained at the location indicating the persons holding keys for the operation of the elevator.

5. Each landing and the elevator car shall be posted to indicate that the elevator is only for the use of disabled persons.

6. The travel distance of the elevator shall not exceed 50 feet.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—73.22(89A) Escalators.

73.22(1) Each escalator shall be provided with an electrically released mechanically applied brake capable of stopping the up and down traveling escalator with any load up to and including the rated load. The brake shall be located either on the driving machine or on the main drive shaft.

73.22(2) Starting switches shall be of the key-operated type. Starting switches shall be located on or near the escalator.

73.22(3) Emergency stop buttons or other type manually operated switches having red buttons or handles shall be accessibly located at or near the bottom and top landings. The buttons or levers shall be protected to prevent accidental operation.

73.22(4) A broken step-chain device shall be provided on each escalator that will cause interruption of power to the driving machine if a step chain breaks or if excessive sag occurs in either step chain.

73.22(5) Each escalator shall have comb plates at top and bottom landings of the escalator. Comb-plate teeth shall be meshed with and set into slots in the tread surface of the steps so that the points of the teeth are always below the upper surface of the treads.

73.22(6) Each escalator balustrade or moulding on the balustrade shall have a smooth surface. Screwheads shall set flush with the surface or be of the oval head type without any burrs or rough places on their surface.

73.22(7) The clearance on either side of the steps between the step tread and the adjacent skirt panel shall be not more than 3/16 inch.

73.22(8) Step treads shall be illuminated throughout their run. The light intensity shall be not less than 2 foot-candles.

73.22(9) An enclosed fused disconnect switch or circuit breaker arranged to disconnect the power supply to the escalator shall be in each machine room or wherever the controller is located.

73.22(10) A stop switch shall be provided in each machinery space where means of access to the space is provided. The switch when opened shall cause electric power to be removed from the escalator driving-machine motor and brake. The switch shall be of the manually opened and closed type and shall be marked "STOP".

73.22(11) Hand or finger guards shall be provided at the point where the handrail enters the balustrade.

73.22(12) Where the clearance of the upper outside edge of the balustrade and a ceiling or scaffold is less than 12 inches or where the intersection of the outside balustrade and a ceiling or soffit is less than 24 inches from the centerline of the handrail, a solid guard shall be provided in the intersection of the angle of the outside balustrade and the ceiling or soffit. The vertical front edge of the guard shall project a minimum of 14 inches horizontally from the apex of the angle. The escalator side of the vertical face of the guard shall be flush with the face of the wellway. The exposed edge of the guard shall be rounded.

This rule is intended to implement Iowa Code chapter 89A.

875—73.23(89A) Moving walks. Rescinded IAB 6/17/09, effective 7/22/09.

875—73.24(89A) Dumbwaiters. All dumbwaiters whether electric or hand powered shall conform to ANSI A17.1, 1971, section 700. Exceptions: Required rules for hoistway construction as set forth in ANSI A17.1, 1971, shall not apply to existing installations.

875—73.25(89A) Sprinkler retrofits and shunt trip breakers. Rescinded IAB 6/17/09, effective 7/22/09.

875—73.26(89A) Safety bulkheads. Rescinded IAB 6/17/09, effective 7/22/09.

These rules are intended to implement Iowa Code chapter 89A.

[Filed emergency 12/15/75, Notice 10/16/75—published 12/29/75, effective 12/15/75]
[Filed 7/28/82, Notice 5/26/82—published 8/18/82, effective 9/30/82]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]
[Filed 2/15/01, Notice 10/18/00—published 3/7/01, effective 4/11/01]
[Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 1/1/04]
[Filed 2/10/06, Notice 1/4/06—published 3/1/06, effective 4/5/06]
[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed 7/3/07, Notice 4/25/07—published 8/1/07, effective 9/5/07]
[Filed 10/17/07, Notice 8/1/07—published 11/7/07, effective 12/12/07]
[Filed 12/11/07, Notice 10/24/07—published 1/2/08, effective 2/6/08]
[Filed 5/29/08, Notice 4/23/08—published 6/18/08, effective 7/23/08]
[Filed ARC 7840B (Notice ARC 7696B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 8760B (Notice ARC 8623B, IAB 3/24/10), IAB 5/19/10, effective 6/23/10]

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 74]

CHAPTER 74
EXISTING ESCALATORS, MOVING WALKS AND DUMBWAITERS

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 74]

Rules 74.1 to 74.3 renumbered as 73.22 to 73.24 IAB 3/7/01, effective 4/11/01

CHAPTER 75
FEES

Rescinded IAB 6/17/09, effective 7/22/09

CHAPTER 76
PERMITS

Rescinded IAB 6/17/09, effective 7/22/09

CHAPTER 77
VARIANCES

Rescinded IAB 6/18/08, effective 7/23/08.

CHAPTERS 78 and 79
Reserved

BOILERS AND PRESSURE VESSELS

CHAPTER 80
BOILER AND PRESSURE VESSEL BOARD
ADMINISTRATIVE AND REGULATORY AUTHORITY

875—80.1(89) Definitions. The definitions contained in this rule apply to 875—Chapters 80 to 96.

"Board" means the boiler and pressure vessel board.

"Board office" means the offices of the division of labor services of the department of workforce development.

"Commissioner" means the labor commissioner of the state of Iowa.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—80.2(89) Purpose and authority of board. The purpose of the board is to perform the statutory duties described in Iowa Code chapter 89. The board's mission is to protect the public health, safety and welfare by improving the installation, repair, maintenance, alteration, use, and operation of boilers and pressure vessels in the state. The authority and responsibilities of the board include, but are not limited to:

80.2(1) Adopting rules necessary to protect public safety and health and to administer the duties of the board.

80.2(2) Hearing and deciding appeals concerning boiler and pressure vessel inspection reports.

80.2(3) Establishing fees.

80.2(4) Establishing committees of the board, the members and chairpersons of which shall be appointed by the board chairperson.

80.2(5) Performing any other function authorized by law.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—80.3(89) Organization of board.

80.3(1) The board shall be composed of the commissioner or the commissioner's designee and eight additional members appointed by the governor and confirmed by the senate.

80.3(2) The eight appointed members of the board shall include:

a. One member who is a special inspector and who is employed by an insurance company and commissioned to inspect boilers and pressure vessels.

b. One member from a certified employee organization who shall represent steamfitters.

c. Two members who are mechanical engineers who regularly practice in the area of boilers and pressure vessels.

d. One member who is a boiler and pressure vessel distributor.

e. One member who represents boiler and pressure vessel manufacturers.

f. One member who is a mechanical contractor engaged in the business of installation, renovation, and repair of boilers and pressure vessels.

g. One member from a certified employee organization who shall represent boilermakers.

80.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the commissioner nor the commissioner's designee may serve as chairperson. The chairperson shall, when present, preside at meetings, appoint committees, and perform all duties and exercise all powers of the chairperson. The vice chairperson shall, in the absence or incapacity of the chairperson, perform all duties and exercise all powers of the chairperson.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—80.4(21,89) Public meetings.

80.4(1) The board shall hold at least one meeting each calendar quarter.

80.4(2) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings shall be conducted in accordance with Robert's Rules of Order.

80.4(3) The chairperson or the chairperson's designee shall prepare an agenda listing all matters to be discussed at the meeting.

80.4(4) A majority of the members of the board shall constitute a quorum, and all final motions and actions must receive a majority of a quorum vote.

80.4(5) Members of the public may be present during board meetings unless the board votes to hold a closed session in accordance with Iowa Code chapter 21. The dates and locations of board meetings may be obtained from the board's Web site or the board office.

80.4(6) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person when a particular topic comes before the board may be granted at the discretion of the chairperson. The chairperson may limit total public comment time to ten minutes.

80.4(7) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

80.4(8) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—80.5(89) Official communications. All official communications, including submissions and requests, shall be addressed to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code chapters 21 and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]

[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]

CHAPTER 81
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES BY THE BOILER AND PRESSURE VESSEL BOARD

875—81.1(17A,89) Waivers of rules. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

875—81.2(17A,89) Applicability of rule. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

875—81.3(17A,89) Criteria for waiver or variance. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

81.3(1) The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

81.3(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

81.3(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

81.3(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—81.4(17A,89) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

81.4(1) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

81.4(2) *Other.* If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

81.4(3) *Filing petition.* A petition is deemed filed when it is received in the board's office. A petition and related materials for consideration should be sent to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12]

875—81.5(17A,89) Content of petition. The required form for a petition for waiver or variance is available on the board's Web site at http://www.iowaworkforce.org/labor/boilerboard.htm. A petition for waiver shall include the following information where applicable and known to the petitioner:

81.5(1) The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

81.5(2) A description of and citation to the specific rule from which a waiver is requested.

81.5(3) The specific waiver requested, including the precise scope and duration.

81.5(4) The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 875—81.3(17A,89). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

81.5(5) A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the boiler or pressure vessel affected by the proposed waiver.

81.5(6) Information regarding the board's action in similar cases.

81.5(7) The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

81.5(8) The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

81.5(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

81.5(10) Signed releases of information authorizing persons with knowledge regarding the petition to furnish the board with information relevant to the petition for waiver.

81.5(11) The state boiler identification number of the relevant object.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—81.6(17A,89) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the board related to the waiver request.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—81.7(17A,89) Notice. The board shall acknowledge a petition within 10 days of its receipt in the board office. The board shall ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

875—81.8(17A,89) Board review procedures.

81.8(1) Unless the board makes other arrangements, petitions for waiver will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting.

81.8(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

875—81.9(17A,89) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

875—81.10(17A,89) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

81.10(1) *Board discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

81.10(2) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

81.10(3) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

81.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

81.10(5) *Conditions.* The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

81.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

81.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practical but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

81.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

81.10(9) *Service of order.* Within 14 days of the ruling, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

81.10(10) *Posting of orders granting waivers.* The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the room where the object is installed.

875—81.11(17A,89) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders contain information the board is authorized or required to keep confidential, the board may instruct the board office to accordingly redact confidential information from petitions or orders prior to public inspection.

875—81.12(17A,89) Summary reports. Summary information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests shall be included in semiannual reports prepared by the board. Copies of this report shall be provided to the administrative rules coordinator and the administrative rules review committee.

875—81.13(17A,89) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

81.13(1) The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

81.13(2) The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

81.13(3) The subject of the waiver order has failed to comply with all conditions contained in the order.

875—81.14(17A,89) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

875—81.15(17A,89) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the specific object to which the order pertains in any proceeding in which the rule in question is sought to be invoked.

875—81.16(17A,89) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 22, and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 2/19/08, Notice 12/19/07—published 3/12/08, effective 4/16/08][◊]
[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]

◊ Two or more ARCs

CHAPTER 82
BOILER AND PRESSURE VESSEL BOARD PETITIONS FOR RULE MAKING

875—82.1(17A,89) Petitions for rule making. Any person or agency may file a petition for rule making with the board requesting the adoption, amendment or repeal of a rule. The required form for a petition for rule making is available on the board's Web site at http://www.iowaworkforce.org/labor/boilerboard.htm. The petition shall be filed at the location specified in rule 875—80.5(89). A petition is deemed filed when it is received by the board office. The board office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be in writing and provide the following information where applicable and known to the petitioner:

82.1(1) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

82.1(2) A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

82.1(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

82.1(4) A brief summary of any data supporting the action urged in the petition.

82.1(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.

82.1(6) The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

82.1(7) The board may deny a petition because it does not provide the required information. The petitioner may file a new petition on the same subject that seeks to eliminate the grounds for the board's rejection.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—82.2(17A,89) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

875—82.3(17A,89) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

875—82.4(17A,89) Board review procedures.

82.4(1) Unless the board makes other arrangements, petitions for rule making will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

82.4(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

82.4(3) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by

regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date the board office mails the required notification to the petitioner.

82.4(4) Denial of a petition because it does not contain the required information does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]

CHAPTER 83
DECLARATORY ORDERS BY THE BOILER AND PRESSURE VESSEL BOARD

875—83.1(17A,89) Petition for declaratory order. Any person may file at the board office a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

83.1(1) The required form for a petition for declaratory order is available on the board's Web site at http://www.iowaworkforce.org/labor/boilerboard.htm. The petition must be in writing and provide the following information where applicable and known to the petitioner:

a. A clear and concise statement of all relevant facts on which the order is requested.

b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.

c. Clear and concise questions the petitioner wants the board to answer.

d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

e. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

f. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.

g. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.

83.1(2) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12]

875—83.2(17A,89) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 875—83.6(17A,89) to whom notice is required by any provision of law. The board may also give notice to any other persons.

875—83.3(17A,89) Intervention.

83.3(1) A person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

83.3(2) At the board's discretion, a person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention more than 20 days after the filing of a petition for declaratory order but prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order.

83.3(3) A petition for intervention shall be filed at the board office. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

a. A petition for intervention must be in writing and provide the following information where applicable and known to the requester:

(1) Facts supporting the intervenor's standing and qualifications for intervention.

(2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

(3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

b. The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—83.4(17A,89) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

875—83.5(17A,89) Inquiries. Inquiries concerning the status of a declaratory order may be made at the board office.

875—83.6(17A,89) Service and filing of petitions and other papers.

83.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

83.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

83.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rules 875—84.10(17A,89) and 875—84.11(17A,89).

875—83.7(17A,89) Board review procedures.

83.7(1) Within 30 days after receipt of a petition for a declaratory order, the board shall issue a document that does one of the following:

a. Declares the applicability of the statute, rule or order to the specified circumstances,

b. Sets the matter for specific proceedings,

c. Agrees to issue a declaratory order by a specified time, or

d. Declines to issue a declaratory order and sets forth the reasons for its actions as provided in subrule 83.9(1).

83.7(2) The board may request that the petitioner submit additional information or argument concerning the petition. The board may also solicit comments on the substance of the petition from any person. Also, comments on the substance of the petition may be submitted to the board by any person.

83.7(3) The petitioner and all intervenors shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—83.8(17A,89) Action on petition. Rescinded IAB 9/22/10, effective 10/27/10.

875—83.9(17A,89) Refusal to issue order.

83.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not provide the required information.

b. Rescinded IAB 9/22/10, effective 10/27/10.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

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

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

83.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

83.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—83.10(17A,89) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

875—83.11(17A,89) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

875—83.12(17A,89) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]

[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]

CHAPTER 84
CONTESTED CASES BEFORE THE BOILER AND PRESSURE VESSEL BOARD

875—84.1(17A,89) Reconsideration of inspection report. The owner or operator of a piece of equipment subject to a written inspection report may petition the commissioner for reconsideration of the report within 30 days of the issuance of the report. Failure to seek timely reconsideration of the inspection report from the commissioner shall be deemed a waiver of all appeal rights under Iowa Code subsection 89.14(6). The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and ASME code sections rests upon the petitioning owner or operator.

84.1(1) A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's Web site at http://www.iowaworkforce.org/labor/boilerboard.htm. A petition for reconsideration shall specify:

a. The party seeking reconsideration, including mailing address and telephone number;
b. The location of the equipment subject to the challenged inspection report;
c. The inspection date;
d. The inspector who issued the challenged inspection report;
e. The specific findings or conclusions to which exception is taken;
f. The relief sought.

84.1(2) A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all relevant documents that the petitioning party desires the commissioner to consider when evaluating the petition.

84.1(3) The commissioner or a designee of the commissioner is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the commissioner deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the commissioner to discover documents or other information that was not submitted with the petition for reconsideration.

84.1(4) Any petition for reconsideration that is not received by the office of the commissioner within 30 days of the issuance of the challenged inspection report shall be deemed untimely and will not be considered by the commissioner.

84.1(5) The commissioner shall not consider any request for waiver or variance of an administrative rule made as part of a petition for reconsideration. Requests for waivers or variances of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 81.

84.1(6) The commissioner shall issue a written ruling on the petition for reconsideration. In ruling on a petition for reconsideration, the commissioner may:

a. Affirm the inspection report as issued;
b. Issue an amended inspection report;
c. Rescind the inspection report;
d. Deny the petition as untimely.

84.1(7) Any petition for reconsideration that is not ruled upon by the commissioner within 20 days of receipt by the office of the commissioner shall be deemed denied by the commissioner and the challenged inspection report shall be considered affirmed as issued.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.2(17A,89) Appeal to the board. The commissioner's ruling on a petition for reconsideration or the commissioner's deemed denial of a petition for reconsideration may be appealed to the board. An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner's written ruling on a petition for reconsideration or the commissioner's deemed denial of a petition for reconsideration. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal is available on the board's Web site at http://www.iowaworkforce.org/labor/boilerboard.htm. Consideration of an appeal of a ruling on a petition for reconsideration shall be a contested case proceeding subject to the provisions of Iowa Code

chapter 17A. The commissioner shall have an automatic right of intervention in any appeal of the ruling on petition for reconsideration and shall defend the ruling in a contested case proceeding.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.3(17A,89) Informal review. If the appellant requests an informal review and the commissioner does not object, the board may conduct an informal review of the facts and circumstances subject to the provisions of this rule.

84.3(1) In order to preserve the ability of board members to participate in decision making, parties who desire participation in an informal review must therefore waive their right to seek disqualification of a board member based solely on the board member's participation in the informal review. Parties would not be waiving their right to seek disqualification on any other ground. By electing to participate in informal review, a party accordingly agrees that a participating board member is not disqualified from acting as a presiding officer in a later contested case proceeding.

84.3(2) The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

84.3(3) Rules 875—84.4(17A,89) through 875—84.31(17A,89) do not apply during informal review.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.4(17A,89) Delivery of notice. Delivery of the notice of hearing by the board constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the appellant, the appellant's attorney, if known, and the commissioner.

875—84.5(17A,89) Contents of notice. The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. The notice shall contain a statement that it is the appellant's burden on appeal to prove compliance with all applicable statutory provisions, administrative rules, and ASME code sections. The notice shall also contain a reference to the applicable statute and rules.

875—84.6(17A,89) Scope of issues. Only those issues raised before the commissioner in the petition for reconsideration will be considered preserved for appeal to the board.

875—84.7(17A,89) File transmitted to the board. Upon receipt of a notice of hearing issued by the board, the commissioner shall within 30 days forward to the board and all parties of record to the appeal copies of the challenged inspection report, the appellant's petition for reconsideration and all supporting documents, all other documents collected by the commissioner in ruling on the petition for reconsideration, and the commissioner's ruling on the petition for reconsideration.

875—84.8(17A,89) Legal representation. Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

875—84.9(17A,89) Presiding officer.

84.9(1) The presiding officer in all contested cases shall be the board, a panel of board members, or an administrative law judge assigned by the department of inspections and appeals. When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 84.9(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

84.9(2) Any party to a contested case that 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 which identifies

the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

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

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

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

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

f. The request was not timely filed.

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

84.9(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and to issue a proposed decision in a contested case shall have a J.D. degree unless this requirement is waived by the board.

84.9(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

84.9(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 875—84.26(17A,89) and 875—84.27(17A,89). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

84.9(6) Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members shall have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

875—84.10(17A,89) Service and filing.

84.10(1) *Service—when required.* Except where otherwise provided by law, when a document is filed in a contested case proceeding, it shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

84.10(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 personal 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.

84.10(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the board office. All documents that are required to be served upon a party shall be filed simultaneously with the board.

84.10(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board at the location set forth in rule 875—80.5(89), 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.

84.10(5) *Proof of mailing.* Proof of mailing includes either:

a. A legible United States Postal Service postmark on the envelope;

b. A certified mail return receipt;

c. A notarized affidavit; or

d. 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 Boiler and Pressure Vessel Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(Date) (Signature)

875—84.11(17A,89) Time requirements.

84.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

84.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

875—84.12(17A,89) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

875—84.13(17A,89) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Any objections shall be filed with the board and served on all parties at least three business days in advance of hearing.

875—84.14(17A,89) Disqualification.

84.14(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, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

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

84.14(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 board 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 subrule 84.25(7).

84.14(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.

84.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 84.14(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.

84.14(5) 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.

84.14(6) 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 875—84.26(17A,89) and seek a stay under rule 875—84.30(17A,89).

875—84.15(17A,89) Consolidation and severance.

84.15(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.

84.15(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

875—84.16(17A,89) Discovery.

84.16(1) Pursuant to Iowa Code chapter 17A, 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.

84.16(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. 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 by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

875—84.17(17A,89) Subpoenas in a contested case. Pursuant to Iowa Code section 17A.13, subsection 1, the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

84.17(1) Upon the written request of a party, the presiding officer shall issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a

contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

84.17(2) A request for a subpoena shall include the following information, as applicable:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other evidence requested;

f. The date, time and location for production, or inspection and copying.

84.17(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other evidence the person is commanded to produce;

g. The date, time and location for production, or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the presiding officer;

j. The date of issuance;

k. A return of service attached to the subpoena.

84.17(4) The presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

84.17(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case 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.

84.17(6) Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

84.17(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

84.17(8) If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.18(17A,89) Motions.

84.18(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.

84.18(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 board or the presiding officer.

The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

84.18(3) The presiding officer may schedule oral argument on any motion.

84.18(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

84.18(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 875—84.29(17A,89) and appeal pursuant to subrule 84.27(3).

875—84.19(17A,89) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless the parties waive this prohibition.

875—84.20(17A,89) Prehearing conference.

84.20(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

84.20(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who 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.

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.

84.20(3) In addition to the requirements of subrule 84.20(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 that 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 that will expedite the hearing.

84.20(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

875—84.21(17A,89) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

84.21(1) A written application for a continuance shall:

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

b. State the specific reasons for the request; and

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

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

84.21(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

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

875—84.22(17A,89) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

875—84.23(17A,89) Hearing procedures.

84.23(1) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

84.23(2) All objections shall be timely made and stated on the record.

84.23(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

84.23(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.

84.23(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

84.23(6) Witnesses may be sequestered during the hearing.

84.23(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. The 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, the parties may be given the opportunity to present final arguments.

f. The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

84.23(8) The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

84.23(9) The hearing shall be open to the public, except as otherwise provided by law.

84.23(10) Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the board for five years after the resolution of the case.

84.23(11) Default.

a. If no continuance was granted and a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. 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.

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board 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 subrule 84.27(3). 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 attached, sworn affidavit of a person with personal knowledge of the fact.

d. 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.

e. 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.

f. "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 1.977.

g. 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.

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

i. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.24(17A,89) Evidence.

84.24(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.

84.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

84.24(3) Evidence in the proceeding shall be confined to the contested issues as identified in the notice of hearing.

84.24(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should

normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

84.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

84.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

875—84.25(17A,89) Ex parte communication.

84.25(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. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

84.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

84.25(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

84.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

84.25(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.

84.25(6) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

a. If the presiding officer determines that disqualification is warranted, the following shall be submitted for inclusion in the record under each seal by protective order:

(1) A copy of any prohibited written communication,

(2) All written responses to the communication,

(3) A written summary stating the substance of any prohibited oral or other communication not available in written form and all responses made, and

(4) The identity of each person from whom the presiding officer received a prohibited ex parte communication.

b. 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.

84.25(7) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13, subsection 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.

84.25(8) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the commissioner.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—84.26(17A,89) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

875—84.27(17A,89) Decisions.

84.27(1) *Proposed decision.* Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

84.27(2) *Final decision.* When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the counsel of record.

84.27(3) *Appeals and review.*

a. *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

b. *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

c. *Notice of appeal.* An appeal of a proposed decision 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:

(1) The parties initiating the appeal;

(2) The proposed decision or order appealed from;

(3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought;

(5) The grounds for relief.

d. *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 14 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.

e. *Scheduling.* The board shall issue a schedule for consideration of the appeal.

f. *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The 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.

g. *Record.* The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

875—84.28(17A,89) Contested cases with no factual disputes. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

875—84.29(17A,89) Applications for rehearing.

84.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

84.29(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.

84.29(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

84.29(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.

84.29(5) *Disposition.* The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

875—84.30(17A,89) Stays of board actions.

84.30(1) *When available.*

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

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

84.30(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

84.30(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

875—84.31(17A,89) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

84.31(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

84.31(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 84.29(5).

These rules are intended to implement Iowa Code chapters 17A and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]

CHAPTER 85
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES OF THE BOILER AND PRESSURE VESSEL BOARD

875—85.1(22,89) Definitions. As used in this chapter:

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

"Custodian" in these rules means the boiler and pressure vessel board.

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

"Record" in these rules means the whole or a part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the board.

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

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.2(22,89) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22; the board shall cooperate with members of the public in implementing the provisions of that chapter.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.3(22,89) Requests for access to records.

85.3(1) *Location of record.* A request for access to a record should be directed to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

85.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays.

85.3(3) *Request for access.* Requests for access to open records may be made in writing, in person, by facsimile, E-mail, or other electronic means, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the board's response. A person shall not be required to give a reason for requesting an open record. While agencies are not required by Iowa Code chapter 22 to respond to requests for public records that are not made in person, the board will respond to such requests as reasonable under the circumstances.

85.3(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a

confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 875—85.4(22,89) in this chapter and other applicable provisions of law.

85.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

85.3(6) *Copying.* A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available in the board office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

85.3(7) *Fees.*

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

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board shall be prominently posted in board offices. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and posted in board offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The custodian shall prominently post in board offices the hourly fees to be charged for supervision of records during examination and copying. The hourly fee shall be based upon the pay scale of the employee involved and other actual costs incurred. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

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

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12]

875—85.4(22,89) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 875—85.3(22,89).

85.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

85.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

85.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential

record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

85.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

85.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

875—85.5(22,89) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

85.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

85.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

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

85.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the board does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

85.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

85.5(5) *Request granted or deferred.* If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

85.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.6(22,89) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.7(22,89) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of an attorney before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.8(22,89) Disclosures without the consent of the subject.

85.8(1) Open records are routinely disclosed without the consent of the subject.

85.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 875—85.9(17A,89) or in the notice for a particular record system.

b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.9(17A,89) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. "Routine use" includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

85.9(1) Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes a legitimate need to use confidential records.

85.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

85.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

85.9(4) Transfers of information within the board, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

85.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

85.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

85.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in appeal proceedings.

85.9(8) Transmittal to the district court of the record in judicial review proceedings pursuant to Iowa Code section 17A.19.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.10(22,89) Consensual disclosure of confidential records.

85.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 875—85.7(22,89).

85.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

875—85.11(22,89) Release to subject.

85.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the board need not release the following records to the subject:

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

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

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

d. Other records may be withheld from the subject as authorized by law.

85.11(2) When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.12(21,22,89) Availability of records.

85.12(1) *General.* Board records are open for public inspection and copying unless otherwise provided by rule or law.

85.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal information in confidential personnel records of board members and licensees. (Iowa Code section 22.7(11))

b. Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

c. Information or records received from a restricted source and any other information or records made confidential by law.

d. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

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

85.12(3) *Authority to release confidential records.* The board may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 875—85.4(22,89). If the board initially determines that it will release such records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 85.4(3).
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.13(22,89) Applicability. This chapter does not:

85.13(1) Require the board to index or retrieve records that contain information about individuals by a person's name or other personal identifier.

85.13(2) Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

85.13(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the board that are governed by the regulations of another agency.

85.13(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

85.13(5) Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.
[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.14(17A,22,89) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems. For each record system, this rule describes the legal authority for the collection of that information. The record systems maintained by the board are:

85.14(1) *Personnel records.* These records contain personal information about board members which may be confidential pursuant to Iowa Code section 22.7(11). The records may include but are not limited to biographical information, medical information relating to disability, and information required for expense reimbursement.

85.14(2) *Contested case records.* Contested case records are maintained and contain names of the people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records. These records are collected pursuant to Iowa Code section 89.14.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.15(17A,22,89) Other groups of records. This rule describes groups of records maintained by the board other than record systems. These records are routinely available to the public. However, the board's files of these records may contain confidential information. These records may contain information about individuals. These records include:

85.15(1) *Rule-making records.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are stored on paper and electronically.

85.15(2) *Board records.* Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the board office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored on paper and electronically.

85.15(3) *Board decisions, findings of fact, final orders, and other statements of law, policy, or declaratory orders issued by the board in the performance of its functions.* These records are open to the public except for information that is confidential according to rule 875—85.12(21,22,89). This information is stored on paper and electronically.

85.15(4) *Waivers and variances.* Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others are stored on paper and electronically.

85.15(5) *Publications.* News releases, project reports, newsletters, and other publications are available from the board office. These records may contain information about individuals. This information is stored on paper and electronically, and some publications may be found on the board's Web site.

85.15(6) *Other records.* Other records that are not exempted from disclosure by law may be stored on paper or electronically.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—85.16(22,89) Data processing system. Board records are not stored in a data processing system which matches, collates, or permits comparison of personally identifiable information in one record system with personally identifiable information in another record system.

875—85.17(22,89) Notice to suppliers of information. Persons that are requested by the board to provide information to the board are notified pursuant to this rule of uses the board will make of the information.

85.17(1) The board may request names and affiliations from members of the public that attend board meetings. Except for closed sessions, the records of board meetings are public records and information supplied will be subject to records requests pursuant to this chapter and Iowa Code chapter 22. Provision of this information is voluntary and there will be no consequences for failure to provide requested information unless the person is also covered by subrule 85.17(2).

85.17(2) The board will request name, contact information, and affiliation from persons requesting board action. This information will be used as needed to process the request for board action. Requests for board action are public records and information supplied will be subject to open records requests

pursuant to this chapter and Iowa Code chapter 22. Insufficient contact information provided with the request for board action could result in a denial of the request for board action.

These rules are intended to implement Iowa Code chapters 17A, 21, 22 and 89.

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]

CHAPTERS 86 to 89
Reserved

CHAPTER 90
ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

[Prior to 1/14/98, see 347—Chs 41 to 49]
[Prior to 8/16/06, see 875—Chs 200, 202]

875—90.1(89) Purpose and scope. These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89. An object shall not be considered "under pressure" and shall not be within the scope of Iowa Code chapter 89 when there is clear evidence that the manufacturer did not intend it to be operated at more than 3 psi and the object is operating at 3 psi or less.
[**ARC 0416C**, IAB 10/31/12, effective 12/5/12]

875—90.2(89,261,252J,272D) Definitions. To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule shall be applicable to the rules contained in 875—Chapters 90 to 96.

"Alteration" means a change in a boiler or pressure vessel that substantially alters the original design requiring consideration of the effect of the change on the original design. It is not intended that the addition of nozzles smaller than an unreinforced opening size will be considered an alteration.

"ANSI/ASME CSD-1" means Control and Safety Devices for Automatically Fired Boilers.

"ASME" means the American Society of Mechanical Engineers.

"Blowoff valve" means all blowoff valves, drain valves, and pipe connections.

"Boiler" means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat. "Boiler" includes all temporary boilers.

"Certificate of noncompliance" means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;
2. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or
3. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

"CFR" means Code of Federal Regulations.

"Construction or installation code" means the applicable standard for construction or installation in effect at the time of installation.

"Division" means the division of labor services, unless another meaning is clear from the context.

"Electric boilers" means a power boiler, heating boiler, high or low temperature water boiler in which the source of heat is electricity.

"External inspection" means as complete an examination as can be reasonably made of the external surfaces and safety devices while the boiler or pressure vessel is in operation.

"High temperature water boiler" means a water boiler intended for operations at pressures in excess of 160 psig or temperatures in excess of 250 degrees F.

"Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F at the boiler outlet.

"Hot water supply boiler" means a boiler completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig or at temperatures not exceeding 250 degrees F.

"Institution of health and custodial care" means any of the following:

1. A health care facility as defined by Iowa Code section 135C.1;
2. An assisted living program as defined by Iowa Code section 231C.2;
3. A boarding home as defined by Iowa Code section 1350.1;
4. A hospice that offers inpatient services in an institutional setting;
5. Any institution or facility in which persons are housed to receive medical, health, or other care or treatment; or

6. Any other institution or facility in which persons are housed to receive assistance with meeting personal needs or activities of daily living.

A facility or office that provides care and services only on an outpatient basis shall not be an "institution of health and custodial care."

"Internal inspection" means as complete an examination as can be reasonably made of the internal and external surfaces of a boiler or pressure vessel while it is shut down and while manhole plates, handhole plates or other inspection opening closures are removed as required by the inspector.

"ISO" means International Standards Organization.

"Labor commissioner" means the labor commissioner or the commissioner's designee.

"Lap seam crack" means a crack found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

"National Board" means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of boiler codes.

"National Board Inspection Code" means the Manual for Boiler and Pressure Vessel Inspectors (ANSI/NB 23) published by the National Board. Copies of the code may be obtained from the National Board.

"Object" means a boiler or pressure vessel.

"Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch or a water boiler intended for operation at pressures in excess of 160 pounds per square inch or temperatures in excess of 250 degrees Fahrenheit.

"Process steam generator" means a vessel or system of vessels comprised of one or more drums and one or more heat exchange surfaces as used in waste heat or heat recovery type steam boilers.

"Psig" means pounds per square inch gage.

"Reinstalled boiler or pressure vessel" means an object removed from its original setting and reinstalled at the same location or at a new location.

"Relief valve" means an automatic pressure-relieving device actuated by a static pressure upstream of the valve that opens further with the increase in pressure over the opening pressure and that is used primarily for liquid service.

"Repair" means work necessary to return a boiler or pressure vessel to a safe operating condition.

"Rupture disk device" means a nonreclosing pressure-relief device actuated by inlet static pressure and designed to function by the bursting of a pressure-containing disk.

"Safety appliance" shall include, but not be limited to:

1. Rupture disk device;
2. Safety relief valve;
3. Safety valve;
4. Temperature limit control;
5. Pressure limit control;
6. Gas switch;
7. Air switch; or
8. Any major gas train control.

"Safety relief valve" means an automatic, pressure-actuated relieving device suitable for use as a safety or relief valve, depending on application.

"Safety valve" means an automatic, pressure-relieving device actuated by the static pressure upstream of the valve and characterized by full opening pop action. The safety valve is used for gas or vapor service.

"Special inspection" means an inspection which is not required by Iowa Code chapter 89.

"Temperature and pressure relief valve" means a valve set to relieve at a designated temperature and pressure.

"Unfired steam boiler" means a vessel or system of vessels intended for operation at a pressure in excess of 15 psig for the purpose of producing and controlling an output of thermal energy.

"Unfired steam pressure vessel" means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source.

"U.S. customary units" means feet, pounds, inches and degrees Fahrenheit.

"Water heater supply boiler" means a closed vessel in which water is heated by combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressure not exceeding 160 psig and shall include all controls and devices necessary to prevent water temperatures from exceeding 210 degrees F.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 9790B**, IAB 10/5/11, effective 11/9/11; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 0739C**, IAB 5/15/13, effective 6/19/13]

875—90.3(89) Iowa identification numbers. All objects shall be identified by an Iowa identification number. State inspectors and special inspectors shall assign identification numbers as directed by the division to all jurisdictional objects that lack numbers. Identification numbers shall be attached in plain view to the object using one of the following methods:

1. A yellow sticker 2 inches by 3 inches affixed to the object and bearing the number.
2. A metal tag 1 inch by 2½ inches affixed to the object and bearing the number.
3. Numbers at least 5/16 of an inch high and stamped directly on the object.

875—90.4(89) National Board registration. Rescinded IAB 11/18/09, effective 1/1/10.

875—90.5(89) Preinspection owner or user preparation.

90.5(1) *Preparation of objects.* Each owner or user shall ensure that each object covered by Iowa Code chapter 89 is prepared for inspection pursuant to this rule.

90.5(2) *Confined space and lockout, tagout procedures.*

a. It is the responsibility of the owner or user to assess all objects for compliance with the confined space and lockout, tagout standards pursuant to 29 CFR 1910.146 and 1910.147. If an object is a non-permit-required confined space or a permit-required confined space as defined by 29 CFR 1910.146, the owner or user must comply with all applicable requirements of 29 CFR 1910.146 and 1910.147 in preparing the object for inspection.

b. It is the duty of the owner or user to inform any inspector of the owner's or user's confined space entry and lockout, tagout procedures and supply to the inspector all information necessary to assess whether the confined space is safe for entry. It is the right of an inspector to verify any of the information supplied.

c. If the requirements of 29 CFR 1910.146 and 1910.147 are not met, the inspector shall not enter the space. If there is a breach of the procedure or the procedure is inconsistent with 29 CFR 1910.146 or 1910.147, the inspection process shall cease until the space is reassessed and determined to be safe or the procedure is rewritten in a manner consistent with the standards. No inspector shall violate the owner's or user's confined space or lockout, tagout procedures in making an inspection.

d. The owner or user shall have all objects locked and tagged, as applicable, prior to the inspector's entry for inspection or testing.

e. For entry into a permit-required confined space, the owner or user shall provide the necessary equipment such as air monitors and a qualified attendant who has received all the information relevant to the entry.

90.5(3) *Hydrostatic tests.* The owner or user shall prepare for and apply a hydrostatic test, whenever necessary, on the date specified by the inspector, which date shall be not less than seven days after the date of notification.

90.5(4) *Boilers.* A boiler shall be prepared for internal inspection in the following manner:

a. Fluid shall be drawn off and the boiler washed thoroughly.

b. Manhole and handhole plates, washout plugs and inspection plugs in water columns shall be removed as required by the inspector. The furnace and combustion chambers shall be thoroughly cooled and cleaned.

c. All grates of internally fired boilers shall be removed.

d. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

e. Low-water fuel cutoff controls shall be opened or removed to allow for visual inspection.

90.5(5) *Pressure vessels.* The extent of inspection preparation for a pressure vessel will vary. If the inspection is to be external only, advance preparation is not required other than to afford reasonable access to the vessel. For combined internal and external inspections of small vessels of simple construction handling air, steam, nontoxic or nonexplosive gases or vapors, minor preparation is required, including affording reasonable means of access and removing manhole plates and inspection openings. In other cases, preparation shall include removing the internal fittings and appurtenances to permit satisfactory inspection of the interior of the vessel if required by the inspector.

90.5(6) *Removal of covering or brickwork to permit inspection.* If the object is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of rivets, pitch of the rivets, and other data necessary to determine the safety of the object may be obtained, providing the information cannot be determined by other means. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

90.5(7) *Improper preparation for inspection.* If an object has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for hydrostatic tests as set forth in this chapter, the inspector may decline to make the inspection or test, and the inspection certificate shall be withheld until the owner or user complies with the requirements.

[**ARC 9082B**, IAB 9/22/10, effective 10/27/10]

875—90.6(89) Inspections.

90.6(1) *General.* All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (2011), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

90.6(2) *Schedule.*

a. All required inspections must be performed according to the schedule set forth in Iowa Code section 89.3.

b. Except for inspections of unfired steam pressure vessels operating in excess of 15 pounds per square inch and low pressure steam boilers, each certificate inspection must be performed within a 60-day period prior to the expiration date of the operating certificate. Modification of this 60-day period will be permitted only upon written application showing just cause for waiver of the 60-day period.

c. Special inspections may be conducted at any time mutually agreed to by the division and the object's owner or user.

90.6(3) *Inspections conducted by special inspectors.* Special inspectors shall provide copies of the completed report to the insured and to the division within 30 days of the inspection. The reports shall list all adverse conditions and all requirements, if any. If the special inspector has not notified the division of the inspection results within 30 days of the expiration of an operating certificate, the division may conduct the inspection.

90.6(4) *Type of inspection.* The inspection shall be an internal inspection when required; otherwise, it shall be as complete an external inspection as possible. Conditions including, but not limited to, the following may also be the basis for an internal inspection:

a. Visible metal or insulation discoloration due to excessive heat.

b. Visible distortion of any part of the pressure vessel.

c. Visible leakage from any pressure-containing boundary.

d. Any operating records or verbal reports of a vessel being subjected to pressure above the nameplate rating or to a temperature above or below the nameplate design temperature.

e. A suspected or known history of internal corrosion or erosion.

f. Evidence or knowledge of a vessel having been subjected to external heat from a fire.

g. A welded repair not documented as required.

h. Evidence of an accident, incident or malfunction that could affect or may have resulted from a problem with the object's integrity.

90.6(5) *Internal inspections for unfired steam pressure vessels operating at more than 15 pounds per square inch.* The commissioner may require an internal inspection of an unfired steam pressure vessel operating in excess of 15 psi when an inspector observes any deviation from these rules, Iowa Code chapter 89, the construction code, the installation code, or the National Board Inspection Code.

90.6(6) *Inspection of inaccessible parts.* When, in the opinion of the inspector, as a result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and thickness measurement of any part of the vessel. Nondestructive examination is acceptable.

90.6(7) *Imminent danger.* If the labor commissioner determines that continued operation of an object constitutes an imminent danger that could seriously injure or cause death to any person, notice to immediately cease operation of that object shall be posted by the labor commissioner. Upon such notice, the owner shall immediately begin the necessary steps to cease operation of the object. The object shall not be used until the necessary repairs have been completed and the object has passed inspection. Operation of an object in violation of this subrule may result in further legal action pursuant to Iowa Code sections 89.11 and 89.13.

90.6(8) *Internal inspections on a four-year cycle.* The owner shall demonstrate compliance with the requirements set forth in 2012 Iowa Acts, Senate File 2280, by annually submitting to the labor commissioner a notarized affidavit. The affidavit shall be in a format approved by the labor commissioner and shall be signed by the owner or an officer of the company.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 1189C**, IAB 11/27/13, effective 1/1/14]

875—90.7(89) Fees.

90.7(1) *Special inspector commission fee.* A $55 fee shall be paid annually to the commissioner to obtain a special inspector commission pursuant to Iowa Code section 89.7.

90.7(2) *Certificate fee.* A $40 fee shall be paid for each one-year certificate, an $80 fee shall be paid for each two-year certificate, and a $160 fee shall be paid for each four-year certificate.

90.7(3) *Fees for inspection.* An inspection fee for each object inspected by a division inspector shall be paid by the appropriate party as follows:

a. A $55 fee for each water heater supply boiler.

b. A $95 fee for each boiler, other than a water heater supply boiler, having a working pressure up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.

c. A $215 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour.

d. A $55 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure of 15 pounds or more per square inch.

e. In addition to the applicable object's inspection fee, if the division cannot follow normal practice of scheduling inspections in a cost-effective manner due to a request by an owner or user for a customized schedule, travel expenses may be charged at the discretion of the division.

f. Upon receipt of a request for a state inspector to visit or inspect for a reason not required by Iowa Code chapter 89, the labor commissioner may negotiate an appropriate fee.

g. If a boiler or pressure vessel has to be reinspected, there shall be another inspection fee as specified above.

90.7(4) *Fees for attempted inspections.* A $35 fee shall be charged for each attempt by a division inspector to conduct an inspection which is not completed through no fault of the division.

[**ARC 7863B**, IAB 6/17/09, effective 7/1/09; **ARC 8081B**, IAB 8/26/09, effective 9/30/09; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 1422C**, IAB 4/16/14, effective 5/21/14]

875—90.8(89) Certificate. A certificate to operate shall not be issued until the boiler or pressure vessel is in compliance with the applicable rules and all fees have been paid. The current certificate to operate or a copy of the current certificate to operate shall be conspicuously posted in the room where the object is installed.

875—90.9(89,252J,261) Special inspector commissions.

90.9(1) *Application.* A person applying for a commission shall complete, sign, and submit to the division with the required fee the form entitled "Application for Boiler and Pressure Vessel Special Inspector Commission" provided by the division. Additionally, the applicant shall submit a copy of the applicant's current National Board work card with each application.

90.9(2) *Expiration.* The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. Each commission shall expire no later than June 30 of each year.

90.9(3) *Changes.* The special inspector shall notify the division at the time any of the information on the form or attachments changes.

90.9(4) *Denials.* The labor commissioner may refuse to issue or renew a special inspector's commission for failure to complete an application package, if the applicant or inspector does not hold a National Board commission, or for any reason listed in subrules 90.9(6) to 90.9(8).

90.9(5) *Investigations.* Investigations shall take place at the time and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

90.9(6) *Reasons for probation.* The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

90.9(7) *Reasons for suspension.* The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals the following:

a. The special inspector failed to submit and report inspections on a timely basis;

b. The special inspector abused the special inspector's authority;

c. The special inspector misrepresented self as a state inspector or a state employee;

d. The special inspector used commission authority for inappropriate personal gain;

e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;

f. The special inspector committed numerous violations as described in subrule 90.9(6);

g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

h. The National Board revoked or suspended the special inspector's work card;

i. The division received a certificate of noncompliance; or

j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs *"a"* to *"h"* of this subrule.

90.9(8) *Reasons for revocation.* The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

a. The special inspector filed a misleading, false or fraudulent report;

b. The special inspector failed to perform a required inspection;

c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;

d. The special inspector failed to notify the division in writing of any accident involving an object;

e. The special inspector committed repeated violations as described in subrule 90.9(7);

f. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

g. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs *"a"* to *"f"* of this subrule;

h. The National Board revoked or suspended the special inspector's work card; or

i. The division received a certificate of noncompliance.

90.9(9) *Procedures.* The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

a. Notice of actions. The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A. A copy shall be sent to the insurance company employing the special inspector.

b. Contested cases. The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. Hearing procedures. The hearing procedures in 875—Chapter 1 shall govern.

d. Emergency suspension. Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

e. Probation period. A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

f. Suspension period. A special inspector's commission may be suspended up to five years for each incident causing a suspension.

g. Revocation period. A special inspector's commission that has been revoked shall not be reinstated for five years.

h. Concurrent actions. Multiple actions may proceed at the same time against any special inspector.

i. Revoked or suspended commissions. Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall forfeit the special inspector's commission card to the labor commissioner.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—90.10(89) Quality reviews, surveys and audits.

90.10(1) An entity that manufactures or repairs boilers, pressure vessels or related equipment may request quality reviews, surveys or audits from certifying organizations such as the ASME or the National Board. The division is authorized to conduct the quality reviews, surveys or audits. If the division performs the service, the manufacturer or repairer shall pay all applicable expenses.

90.10(2) Quality reviews, surveys and audits for certification to the National Board or ASME standards shall be conducted only by a person or organization designated by the labor commissioner. Any person or organization seeking this designation on behalf of the division shall provide documented evidence of training, examination, experience, and certification for the type of reviews, surveys and audits to be performed. The labor commissioner shall have final authority to determine qualifications and designations.

a. Assessing quality programs. The division recognizes the ASME and the National Board as qualified designees for conducting quality reviews, surveys and audits that lead to ASME or National Board program certification.

b. ISO 9000 assessments. The division recognizes the ASME and the National Board:

(1) To be acceptable ISO 9000 registrars of quality systems for boilers and pressure vessels and the related pressure-technology equipment industry;

(2) To certify auditors and lead auditors to the requirements of ISO 10011-2 1991(E), Annex A; and

(3) To conduct ISO 9000 assessments for the boiler, pressure vessel, and related pressure-technology equipment industry.

875—90.11(89) Notification of explosion. Owners and users of covered objects must report any object explosion by calling (515)281-3647 or (515)281-6533. If the explosion occurs during normal division

operating hours, notification shall occur before close of business on that day. If the explosion occurs when the division office is closed, the notification shall occur no later than close of business on the next division business day. Division hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.

875—90.12(89) Publications available for review. Pursuant to Iowa Code section 89.5, subsection 3, the standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa.

875—90.13(89) Notice prior to installation. Written notice of intent to install objects subject to the jurisdiction of Iowa Code chapter 89 shall be provided to the labor commissioner at least ten days before installation. Written notice shall be accomplished by completing and submitting to the labor commissioner either:

1. The form designated by the labor commissioner, or
2. The National Board's Boiler Installation Report, I-1.

875—90.14(89) Temporary boilers. A certificate to operate a temporary boiler shall expire one year from the date of issuance or when the temporary boiler is disconnected. Inspections on temporary boilers that remain in one location longer than one year shall be performed according to the inspection schedule of Iowa Code section 89.3. A temporary boiler that is installed at a different location less than a year since the prior internal inspection of the boiler shall be subjected to a hydrostatic test pursuant to the National Board Inspection Code or to an internal inspection, at the discretion of the inspector.

875—90.15(89) Conversion of a power boiler to a low-pressure boiler. The following requirements apply to the conversion of a power boiler to a low-pressure boiler. The owner shall comply with the requirements of subrule 90.15(1) for each conversion. In addition, the owner shall comply with the requirements of subrule 90.15(2) if the converted object will be located outside of a place of public assembly or with the requirements of subrule 90.15(3) if the converted object will be located in a place of public assembly.

90.15(1) *General requirements.*

a. The owner shall provide to the labor commissioner written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available at http://www.iowaworkforce.org/labor/boiler_inspection_.htm. At a minimum the notice shall contain the following:

(1) Address, uses, and owner of the building where the boiler is located.

(2) The Iowa identification number assigned to the boiler.

(3) Name and contact information for the person completing the notice.

(4) Name and contact information for the contractor or other person planning to perform the conversion.

b. Pressure controls shall not exceed 14 pounds per square inch.

c. All boiler controls shall comply with ASME CSD-1.

d. Safety valves and safety relief valves shall be manufactured in accordance with a national or international standard.

e. One or more spring-pop safety valves meeting the following requirements shall be installed on each steam boiler:

(1) The valve shall be adjusted and sealed to discharge at a pressure not to exceed 15 psig.

(2) The valve capacity shall be certified by the National Board.

f. The converted boiler shall be subject to post-conversion external inspection to ensure that the requirements of this rule are met.

90.15(2) *Boilers located outside places of public assembly.* A power boiler that was converted to a low-pressure boiler and that is located outside of a place of public assembly shall not be converted back to a power boiler unless the following requirements are met:

a. The owner shall notify the labor commissioner at least ten days prior to converting the boiler.

b. The owner shall comply with the editions of ASME Section I and CSD-1 in effect at the time of the second conversion.

c. The owner shall comply with the version of 875—Chapter 92 in effect at the time of the second conversion.

90.15(3) *Boilers located in places of public assembly.* A power boiler converted to a low-pressure boiler that is located in a place of public assembly shall comply with 875—Chapter 94.

[**ARC 9232B**, IAB 11/17/10, effective 12/22/10]

These rules are intended to implement Iowa Code chapters 17A, 89, 252J, 261, and 272D.

[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed emergency 5/4/99 after Notice 3/24/99—published 6/2/99, effective 7/1/99]
[Filed 3/14/01, Notice 1/24/01—published 4/4/01, effective 5/9/01]
[Filed 7/29/05, Notice 6/8/05—published 8/17/05, effective 9/21/05]
[Filed emergency 9/6/05—published 9/28/05, effective 9/21/05]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06][◊]
[Filed 11/30/07, Notice 10/24/07—published 12/19/07, effective 1/23/08]
[Filed 2/19/08, Notice 12/19/07—published 3/12/08, effective 4/16/08][1]
[Filed Emergency ARC 7863B, IAB 6/17/09, effective 7/1/09]
[Filed ARC 8081B (Notice ARC 7865B, IAB 6/17/09), IAB 8/26/09, effective 9/30/09]
[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]
[Filed ARC 9082B (Notice ARC 8694B, IAB 4/21/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 9232B (Notice ARC 9087B, IAB 9/22/10), IAB 11/17/10, effective 12/22/10]
[Filed ARC 9790B (Notice ARC 9511B, IAB 5/18/11), IAB 10/5/11, effective 11/9/11]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]
[Filed ARC 0416C (Notice ARC 0322C, IAB 9/5/12), IAB 10/31/12, effective 12/5/12]
[Filed ARC 0739C (Notice ARC 0647C, IAB 3/20/13), IAB 5/15/13, effective 6/19/13]
[Filed ARC 1189C (Notice ARC 1015C, IAB 9/18/13), IAB 11/27/13, effective 1/1/14]
[Filed ARC 1422C (Notice ARC 1333C, IAB 2/19/14), IAB 4/16/14, effective 5/21/14]

◊ Two or more ARCs

1 Date corrected IAC Supp. 3/26/08

CHAPTER 91
GENERAL REQUIREMENTS FOR ALL OBJECTS

[Prior to 1/14/98, see 347—Chs 41 to 49]
[Prior to 8/16/06, see 875—Ch 203]

875—91.1(89) Codes and code cases adopted by reference.

91.1(1) *ASME boiler and pressure vessel codes adopted by reference.* The ASME Boiler and Pressure Vessel Code (2010 with 2011a addenda) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code (2010 with 2011a addenda) except for objects that meet one of the following criteria:

a. An object with an ASME stamp and National Board Registration that establish compliance with an earlier version of the ASME Boiler and Pressure Vessel Code;

b. An object within the scope of 875—Chapter 95;

c. Rescinded IAB 10/5/11, effective 11/9/11.

d. A miniature boiler installed before March 31, 1967;

e. A power boiler or unfired steam pressure vessel installed before July 4, 1951; or

f. A steam heating boiler, hot water heating boiler, or hot water supply boiler installed before July 1, 1960.

91.1(2) *ASME code cases.* If the manufacturer of an object listed ASME Code Case 2529, 2568, 2571, 2571-1, 2710, or 2714 on the manufacturer's data report for the object and the object is otherwise in compliance with all applicable provisions, the object is in compliance with these rules.

91.1(3) *Inspection code adopted by reference.* The National Board Inspection Code (2011) is adopted by reference, and reinstallations, installations, alterations, and repairs after October 10, 2012, shall comply with it.

91.1(4) *Electric code adopted by reference.* The National Electrical Code (2008) is adopted by reference, and reinstallations and installations after January 1, 2010, shall comply with it.

91.1(5) *Piping codes adopted by reference.* The Power Piping Code, ASME B31.1 (2007), ASME B31.1a (2008), and ASME B31.1b (2009), and the Building Services Piping Code, ASME B31.9 (2008), are adopted by reference, and reinstallations and installations after April 14, 2010, shall comply with them up to and including the first valve.

91.1(6) *Control and safety device code adopted by reference.* Controls and Safety Devices for Automatically Fired Boilers (CSD-1) (2012) is adopted by reference, and reinstallations and installations after October 31, 2013, shall comply with it.

91.1(7) *Mechanical code adopted by reference.* Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) (2009) are adopted by reference effective January 1, 2010.

91.1(8) *Oil burning equipment code adopted by reference.* National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (2011), is adopted by reference.

91.1(9) *Fuel gas code adopted by reference.* National Fire Protection Association National Fuel Gas Code, NFPA 54 (2009), is adopted by reference.

91.1(10) *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2011), is adopted by reference.

91.1(11) *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2011), is adopted by reference.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 8590B**, IAB 3/10/10, effective 4/14/10; **ARC 9232B**, IAB 11/17/10, effective 12/22/10; **ARC 9790B**, IAB 10/5/11, effective 11/9/11; **ARC 0319C**, IAB 9/5/12, effective 10/10/12; **ARC 0416C**, IAB 10/31/12, effective 12/5/12; **ARC 1011C**, IAB 9/18/13, effective 10/31/13]

875—91.2(89) Safety appliance. No person shall remove, disable or tamper with a required safety appliance except for the purpose of repair or inspection. An object shall not be operated unless all applicable safety appliances are properly functional and operational.

875—91.3(89) Pressure-reducing valves. Where pressure-reducing valves are used, one or more relief or safety valves shall be provided on the low-pressure side of the reducing valve when the piping equipment on the low-pressure side does not meet the requirements for the full initial pressure. The

relief or safety valves shall be located adjoining or as close as possible to the reducing valve. Proper protection shall be provided to prevent injury or damage caused by the escaping fluid from the discharge of relief or safety valves if vented to the atmosphere. The combined discharge capacity of the relief valves or safety valves shall be such that the pressure rating of the lowest pressure piping or equipment shall not be exceeded in case the reducing valve sticks open. If a bypass around the reducing valves is used, a safety valve is required on the low-pressure side and shall be of sufficient capacity to relieve all the fluid that can pass through the bypass without overpressuring the low-pressure side. A pressure gage shall be installed on the low-pressure side of a reducing valve.

875—91.4(89) Blowoff equipment. The blowdown from an object that enters a sanitary sewer system or blowdown that is considered a hazard to life or property shall pass through blowoff equipment that will reduce pressure and temperature. The temperature of the water leaving the blowoff equipment shall not exceed 150 degrees Fahrenheit. If the local jurisdiction has a temperature limit of less than 150 degrees Fahrenheit, the temperature of the water leaving the blowoff equipment shall comply with the limit set by the local jurisdiction. The pressure of the water leaving the blowoff equipment shall not exceed 5 psig. The blowoff piping and fittings between the object and the blowoff tank shall comply with the construction or installation code. All materials used in the fabrication of object blowoff equipment shall comply with the construction or installation code. All blowoff equipment shall be equipped with openings to facilitate cleaning and inspection.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—91.5(89) Location of discharge piping outlets. The discharge from safety valves, safety relief valves, blowoff pipes and other outlets shall be so arranged that there will be no danger of scalding personnel. When the safety valve or temperature and pressure relief valve discharge is piped away from the object to the point of discharge, provision shall be made for properly draining the piping. The size of the discharge piping shall not be reduced from the size of the relief valve.

875—91.6(89) Pipe, valve, and fitting requirements.

91.6(1) Pipes, valves, and fittings subject to the effects of galvanic action shall not be used on objects covered by these rules except where permitted in 875—Chapter 95. Dielectric fittings shall be used where dissimilar metals are joined.

91.6(2) and **91.6(3)** Rescinded IAB 11/18/09, effective 1/1/10.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—91.7(89) Electric steam generator. Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

875—91.8(89) Alterations, retrofits and repairs to objects. Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

875—91.9(89) Boiler door latches. Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

875—91.10(89) Clearance.

91.10(1) All objects installed prior to September 20, 2006, shall be so located that adequate space is provided for the proper operation, inspection, and necessary maintenance and repair of the object and its appurtenances.

91.10(2) This subrule applies to installations and reinstallations after September 20, 2006. Minimum clearance on all sides of objects shall be 24 inches, or the manufacturer's recommended service clearances if they allow sufficient room for inspection. Where a manufacturer identifies in the installation manual or any other document that the unit requires more than 24 inches of service clearance, those dimensions shall be followed. Manholes shall have five feet of clearance between the manhole opening and any wall, ceiling or piping that would hinder entrance or exit from the object.

875—91.11(89) Fall protection. Safe access to all necessary parts of boilers over eight feet tall shall be provided by a runway platform or fall protection system consistent with the requirements below.

91.11(1) *Runway platform.* A steel runway platform in compliance with the criteria of 29 CFR 1910.23 and 1910.27 shall be installed across the tops of objects or at some other convenient level for the purpose of affording safe access. All runways shall have at least two means of exit remotely located from each other.

91.11(2) *Fall protection system.* A fall protection system shall be in compliance with the requirements of 29 CFR 1910.132.

875—91.12(89) Exit from rooms containing objects. All rooms exceeding 500 square feet of floor area and containing one or more objects having a fuel-burning capacity of 1 million Btu's shall have two means of exit remotely located from each other on each level.

875—91.13(89) Air and ventilation.

91.13(1) *Notice concerning other rules.* The division and the Iowa department of public safety both enforce requirements concerning air and ventilation. Objects that are covered by both sets of rules must comply with both sets of rules.

91.13(2) *Documentation.* Documentation of compliance with any requirement of this rule shall be maintained in the boiler room. However, it is not necessary to maintain documentation of the louvered area.

91.13(3) *National combustion air standards.*

a. *Installations and reinstallations.* Installations and reinstallations shall comply with the edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC currently adopted at rule 875—91.1(89) or with the Iowa combustion air standard in subrule 91.13(4). However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA.

b. *Existing objects.* An adequate supply of combustion air shall be maintained for all objects while in operation. Compliance with the current edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC as adopted at rule 875—91.1(89) or with subrule 91.13(4) constitutes compliance with this rule. Compliance with an earlier edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC constitutes compliance with this rule. However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA. Compliance with an earlier version of Iowa's combustion air rule constitutes compliance with this rule. Earlier versions of Iowa's combustion air rule are available for reference at http://www.iowaworkforce.org/labor/boiler_inspection_.htm.

91.13(4) *Iowa combustion air standard.* A permanent source of outside air shall be provided for each room to permit satisfactory combustion of fuel and ventilation if necessary under normal operations. The minimum ventilation for coal, gas, or oil burners in rooms containing objects is based on the Btu's per hour, required air, and louvered area. The minimum net louvered area shall not be less than 1 square foot. The following table shall be used to determine the net louvered area in square feet:

INPUT (Btu's per hour)	MINIMUM AIR REQUIRED (cubic feet per minute)	MINIMUM LOUVERED AREA (net square feet)
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3
5,000,000	1,200	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8
8,000,000	2,000	6.6
9,000,000	2,250	7.5
10,000,000	2,500	8.3

When mechanical ventilation is used, the supply of combustion and ventilation air to the objects and the firing device shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilating fan shall not exceed 500 feet per minute, and the total air delivered shall be equal to or greater than shown above.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—91.14(89) Condensate return tank. Condensate return tanks shall be equipped with at least two vents or a vent and overflow pipe to protect against a loose float plugging a single connection.

875—91.15(89) Conditions not covered. Any condition not governed by these rules shall be governed by the construction or installation code.

875—91.16(89) Nonstandard objects. Rescinded IAB 3/12/08, effective 4/16/08.

875—91.17(89) English language and U.S. customary units required. All documentation supplied for the unit including but not limited to the manufacturers' data report, drawings, parts lists, installation manuals, and operating manuals shall be in English, and all measurements shall be in U.S. customary units. All pressure gages, thermometers and other controls and safety devices shall also be in U.S. customary units.

875—91.18(89) National Board registration. Except for cast iron boilers, cast aluminum boilers, and objects governed by 875—Chapter 95, all objects shall be registered with the National Board.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—91.19(89) ASME stamp. Except for water heaters regulated by 875—Chapter 95, all objects shall bear the appropriate ASME stamp. Objects shall not be utilized in a manner inconsistent with the stamp.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—91.20(89) CSD-1 Report.

91.20(1) The installer shall complete a Manufacturer's/Installing Contractor's Report for ASME CSD-1 (CSD-1 Report) for each object except for the following:

a. An object within the scope of 875—Chapter 95;

b. An object within the scope of 875—Chapter 96; or

c. A hot water supply boiler covered by ASME Section IV, Part HLW.

d. A boiler with a fuel input rating greater than or equal to 12,500,000 Btu per hour, falling within the scope of NFPA 85, Boiler and Combustion Systems Hazards Code.

91.20(2) The owner shall make the CSD-1 Report available for inspection.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 9232B**, IAB 11/17/10, effective 12/22/10]

These rules are intended to implement Iowa Code chapter 89.

[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed 3/14/01, Notice 1/24/01—published 4/4/01, effective 5/9/01]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 6/27/07, Notice 5/9/07—published 7/18/07, effective 8/22/07]
[Filed 11/30/07, Notice 10/24/07—published 12/19/07, effective 1/23/08]
[Filed 2/19/08, Notice 12/19/07—published 3/12/08, effective 4/16/08]
[Filed 6/24/08, Notice 5/7/08—published 7/16/08, effective 8/20/08]
[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]
[Filed ARC 8590B (Notice ARC 8391B, IAB 12/16/09), IAB 3/10/10, effective 4/14/10]
[Filed ARC 9232B (Notice ARC 9087B, IAB 9/22/10), IAB 11/17/10, effective 12/22/10]
[Filed ARC 9790B (Notice ARC 9511B, IAB 5/18/11), IAB 10/5/11, effective 11/9/11]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]
[Filed ARC 0416C (Notice ARC 0322C, IAB 9/5/12), IAB 10/31/12, effective 12/5/12]
[Filed ARC 1011C (Notice ARC 0817C, IAB 7/10/13), IAB 9/18/13, effective 10/31/13]

CHAPTER 92
POWER BOILERS

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 1/14/98, see Labor Services[347] Ch 43, 44]
[Prior to 8/16/06, see 875—Chs 204, 205]

875—92.1(89) Scope. This chapter applies to all power boilers, and it applies to miniature power boilers installed on and after September 20, 2006. 875—Chapter 93 applies to miniature power boilers installed prior to September 20, 2006.

875—92.2(89) Codes adopted by reference. The codes listed in 875—Chapter 91 apply to objects covered by this chapter.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—92.3(89) Codes adopted by reference. Rescinded IAB 11/18/09, effective 1/1/10.

875—92.4(89) Maximum allowable working pressure for steel boilers. This rule applies to power boilers installed prior to July 1, 1983. A boiler constructed with fusion-welded seams and not radiographed and stress relieved during construction shall not be operated at a pressure in excess of 15 pounds per square inch. Boilers with fusion-welded seams that are radiographed and stress relieved and constructed to ASME Code requirements in effect when the boiler was constructed may be operated at a pressure as established in subrules 92.4(1) and 92.4(2).

92.4(1) *Calculation.* The maximum allowable working pressure on the shell of a boiler shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the course, and the factor of safety allowed by these rules. The formula for determining the maximum allowable working pressure is:

$$\frac{TStE}{RFS} = \text{Maximum allowable working pressure, psig.}$$

Where:

TS = Ultimate tensile strength of shell plate(s), psig. When the tensile strength of a steel plate(s) is unknown, it shall be taken as 55,000 psig for temperatures not exceeding 650 degrees F.

t = Minimum thickness of shell plates of the weakest course, in inches.

E = Efficiency of longitudinal joint calculated pursuant to construction or installation code.

R = Inside radius of the weakest course of the shell or drum, in inches.

FS = Factor of safety specified in subrule 92.4(2).

92.4(2) *Factor of safety.*

a. The lowest factor of safety on boilers shall be four, except for horizontal tubular boilers having continuous lap seams more than 12 feet in length where the factor of safety shall be eight.

b. Boilers that are reinstalled and have lap riveted construction or seams of butt and double strap riveted construction shall use ASME Code, Section I (1971).
[**ARC 0319C**, IAB 9/5/12, effective 10/10/12]

875—92.5(89) Maximum allowable working pressure and temperature for cast iron headers and mud drums. This rule applies to power boilers installed prior to July 1, 1983.

92.5(1) *Tube boiler.* The maximum allowable working pressure on a watertube boiler, the tubes of which are secured in cast iron or malleable iron headers or which have cast iron mud drums, shall not exceed 160 psig or a temperature of 250° F.

92.5(2) *Maximum steam pressure.* The maximum steam pressure on any boiler constructed of cast iron in which steam is generated shall be 15 psig.

875—92.6(89) Rivets. This rule applies to power boilers installed prior to July 1, 1983. When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, shall be selected from ASME Code, Section I (1971).

875—92.7(89) Safety valves. This rule applies to power boilers installed prior to July 1, 1983.

92.7(1) The use of weighted-lever safety valves or safety valves having either the seat or disk of cast iron is prohibited. All power boilers shall have direct, springloaded, pop-type safety valves that conform to the construction or installation code.

92.7(2) Each boiler shall have at least one safety valve. All boilers with more than 500 square feet of water heating surface or an electric power input of more than 1100 kilowatts shall have two or more safety valves.

92.7(3) The safety valve or valves shall be connected to the boiler independent of any other steam connection and attached as close as possible to the boiler without unnecessary intervening pipe or fittings.

92.7(4) No valves of any type shall be placed between the safety valve and the boiler. If an escape pipe is used, no valve shall be placed between the safety valve and the atmosphere. When an escape pipe is used, it shall be at least full size of the safety valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or escape pipe. Any elbow on an escape pipe shall be located close to the safety valve outlet or the escape pipe and shall be anchored and supported securely. All safety valve discharges shall be so located or piped as to be carried away from walkways or platforms. When the safety valve is vented to the outside atmosphere, the second escape pipe shall be arranged as shown in Figure 1.

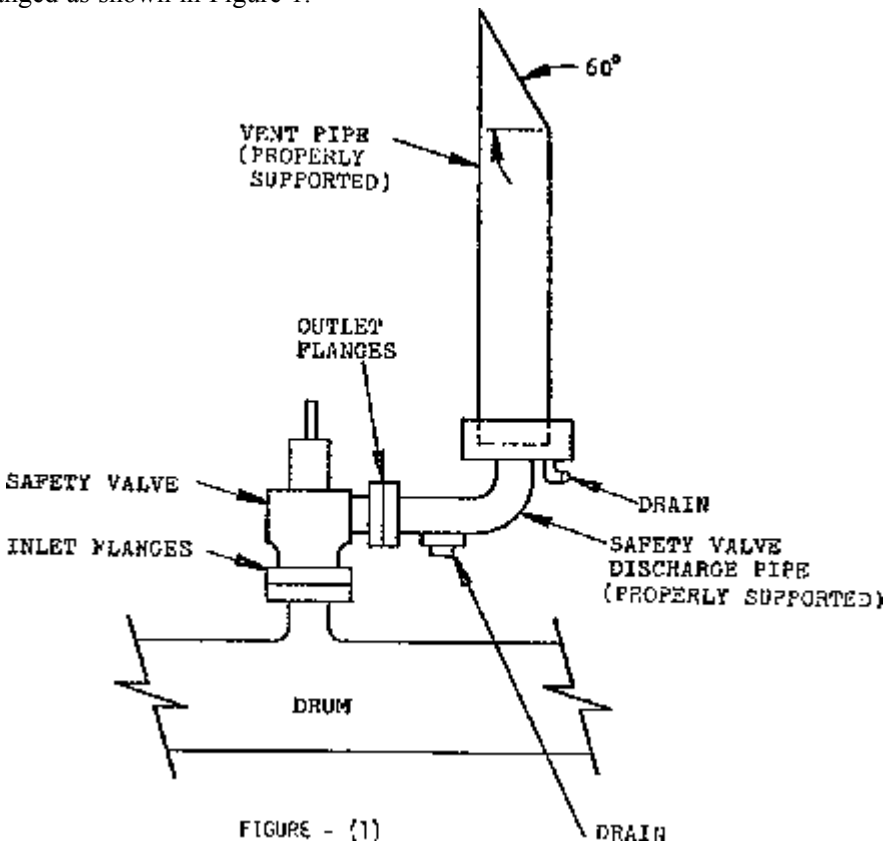

FIGURE - (1)

92.7(5) The safety valve capacity of each boiler shall be such that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 5 percent above the highest pressure to which any valve is set and in no case to more than 6 percent above maximum allowable working pressure.

92.7(6) One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3 percent above the maximum

allowable working pressure, but the range setting of all the safety valves on a boiler shall not exceed 10 percent of the highest pressure at which any valve is set.

92.7(7) When two or more boilers operating at different pressures and safety valve settings are interconnected, the lowest pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

92.7(8) In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not including return traps), safety valves shall not be set at a pressure greater than 94 percent of the lowest pressure maintained in the supply main feeding the boiler.

92.7(9) The minimum safety valve relieving capacity shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface and waterwall heating surface as given in the following table. This method shall not be used on electric boilers, waste heat boilers and forced-flow steam generators without a fixed steam and water line.

Minimum Pounds of Steam Per Hour Per Square
Foot of Heating Surface

Boiler Heating Surface:	Firetube Boilers	Watertube Boilers
Hand Fired	5	6
Stoker Fired	5	8
Oil, Gas, or Pulverized Fuel Fires	8	10
Waterwall Heating Surface:		
Hand Fired	8	8
Stoker Fired	10	12
Oil, Gas, or Pulverized Fuel Fires	14	16

92.7(10) Safety valve sizing.

a. When a boiler is fired only by a gas having a heat value not in excess of 200 Btu's per cubic feet the minimum safety valve relieving capacity may be based on the value given for hand-fired boilers above.

b. The minimum safety valve relieving capacity for electric boilers shall be 3½ pounds per hour per kilowatt input.

c. Maximum steaming capacity for safety valves shall be the value stated on design documents or shall be calculated by multiplying horsepower by 34.5.

875—92.8(89) Boiler feeding. This rule applies to power boilers installed prior to July 1, 1983.

92.8(1) Each boiler shall have a feed supply that will permit it to be fed at any time while under pressure. A boiler having more than 500 square feet of water-heating surface shall have at least two means of feeding, one of which shall be an approved feed pump, injector, or inspirator. One source of feed is directly from the water main. Boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shutoff of heat input prior to the water level reaching the lowest permissible level. The feedwater shall be introduced into the boiler in such a manner that it will not be discharged close to riveted joints of shell or furnace sheets, directly against surfaces exposed to products of combustion, or directed to surfaces subject to radiation from the fire. The feed piping to the boiler shall be provided with a check valve near the boiler and a stop valve between the check valve and the boiler.

92.8(2) When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and source of supply. Whenever a globe valve is used on feed piping, the inlet shall be under the disk of the valve. In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line. The stop valve shall

be placed between the boiler and the check valve, and both shall be located as close to the boiler as is practicable.

875—92.9(89) Water level indicators. This rule applies to power boilers installed prior to July 1, 1983. Outlet connections that allow the escape of an appreciable amount of steam or water shall not be placed on the piping. However, this rule does not prohibit the installation of damper regulators, feed water regulators, low-water fuel cutouts, drains, or steam gages. The water column shall be provided with a drain of at least ¾-inch piping size. The drain must have a valve and be piped to a safe location. Each boiler shall have three or more gage cocks located within the visible length of the water glass, except when the boiler has two water glasses located at the same horizontal lines. Only two gage cocks are required on boilers not over 36 inches in diameter with a heating surface not exceeding 100 square feet. Gage cocks are not required on electric boilers.

875—92.10(89) Pressure gages. This rule applies to power boilers installed prior to July 1, 1983. Each boiler shall have a pressure gage so located that the gage is readable. The pressure gage shall be installed so that it shall at all times indicate the pressure in the boiler. Each steam boiler shall have the pressure gage connected to the steam space or to the water column or its steam connection. A valve or cock shall be placed in the gage connection adjacent to the gage. An additional valve or cock may be located near the boiler providing it is locked or sealed in the open position. No other shutoff valves shall be located between the gage and the boiler. The pipe connection shall be of ample size and arranged so that it may be cleared by blowing out. For a steam boiler the gage or connection shall contain a siphon or equivalent device that will develop and maintain a water seal that will prevent steam from entering the gage tube. Pressure gage connections shall be suitable for the maximum allowable working pressure and temperature, but if the temperature exceeds 406° F, brass or copper pipe or tubing shall not be used. The connections to the boiler, except the siphon, if used, shall not be less than ¼-inch standard pipe size, but where steel or wrought-iron pipe or tubing is used, they shall not be less than ½-inch inside diameter. The minimum size of a siphon, if used, shall be ¼-inch inside diameter. The dial of the pressure gage shall be graduated to approximately double the pressure at which the safety valve is set, but in no case to less than 1½ times this pressure.

875—92.11(89) Steam stop valves. This rule applies to power boilers installed prior to July 1, 1983. Each steam outlet from a boiler, except safety valve and water-column connections, shall be fitted with a stop valve located as close as practicable to the boiler. When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting. When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves having an ample free-blowing drain between them. The discharge of the drain shall be piped clear of the boiler setting. The stop valves shall consist of one automatic nonreturn valve next to the boiler and a second valve of the outside screw and yoke type.

875—92.12(89) Blowoff connection. This rule applies to power boilers installed prior to July 1, 1983. Each boiler shall have a blowoff pipe fitted with valve or cock, in direct connection with the lowest water space practicable.

When the maximum allowable working pressure exceeds 125 psig, the blowoff pipe shall be at least schedule 80 from the boiler to the valve or valves and shall run full size without reducers or bushings. Galvanized materials shall not be used.

All fittings between the boiler and valve shall be steel or at least schedule 80 fittings of bronze, brass, malleable iron, or cast iron, all of which shall be suitable for the pressure and temperature. In case of replacement of pipe or fittings in the blowoff lines, as specified in this paragraph, they shall be installed in accordance with the rules of new installations.

When the maximum allowable working pressure exceeds 125 psig, each bottom blowoff pipe shall be fitted with at least a 250-pound standard valve or cock. Two valves, or a valve and a cock, should be used on each blowoff.

When exposed to direct furnace heat, a bottom blowoff pipe shall be protected by firebrick or other heat resisting material so arranged that the pipe may be inspected.

An opening in the boiler setting for a blowoff pipe shall be arranged to provide for free expansion and contraction.

These rules are intended to implement Iowa Code chapter 89.

[Filed 7/15/59]
[Filed 5/6/83, Notice 3/30/83—published 5/25/83, effective 7/1/83]
[Filed emergency 6/13/83—published 7/6/83, effective 7/1/83]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed 10/25/91, Notice 7/10/91—published 11/13/91, effective 1/1/92]
[Filed 5/16/96, Notice 11/22/95—published 6/5/96, effective 8/1/96]
[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed 3/14/01, Notice 1/24/01—published 4/4/01, effective 5/9/01]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 11/30/07, Notice 10/24/07—published 12/19/07, effective 1/23/08]
[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]

CHAPTER 93
MINIATURE POWER BOILERS INSTALLED PRIOR TO SEPTEMBER 20, 2006

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 1/14/98, see Labor Services[347] Ch 45]
[Prior to 8/16/06, see 875—Ch 206]

875—93.1(89) Scope. This chapter sets forth requirements in addition to those contained in 875—Chapter 92 for boilers that:

1. Have a heating surface of 20 square feet or less;
2. Have a gross volume of 5 cubic feet or less, excluding casing and insulation;
3. Have an inside shell diameter of 16 inches or less;
4. Have 100 psig maximum allowable working pressure; and
5. Were installed prior to September 20, 2006.

For objects covered by this chapter, if there is a conflict between this chapter and Chapter 92, this chapter shall govern the issue.

875—93.2(89) Codes adopted by reference. The codes listed in 875—Chapter 91 apply to objects covered by this chapter.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.3(89) Maximum working pressure. The maximum allowed working pressure is to be determined by rule 875—92.4(89).

875—93.4(89) Safety valves. Boilers covered by this chapter shall be equipped with a sealed spring-loaded pop safety valve of not less than ½-inch pipe size. The minimum relieving capacity of the safety valve shall be determined in accordance with rule 875—92.7(89). In addition to these requirements, the safety valve shall have sufficient capacity to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6 percent above maximum allowable working pressure.

875—93.5(89) Steam stop valves. Each steam line from a miniature power boiler shall be provided with a stop valve located as close to the boiler shell or drum as is practicable except when the boiler and steam receiver are operated as a closed system.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.6(89) Water gages.

93.6(1) Miniature power boilers for operation with a definite water level shall be equipped with a glass water gage for determining the water level. The lowest permissible water level for vertical boilers shall be at a point one-third of the height of the shell above the bottom head or tube sheet. When the boiler is equipped with an internal furnace, the water level shall not be less than one-third of the length of the tubes above the top of the furnace tube sheet. In the case of small boilers operated in a closed system where there is insufficient space for the usual glass water gage, water level indicators of the glass bull's eye type may be used.

93.6(2) Miniature power boilers shall have the lowest visible part of the water gage glass located at least 1 inch above the lowest permissible water level specified by the manufacturer.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.7(89) Feedwater supply.

93.7(1) Except for miniature power boilers operating without the extraction of steam, miniature power boilers shall be provided with at least one feed pump or other feeding device unless the boiler feed line is connected to a water main carrying sufficient pressure to feed the boiler. In the latter case, in lieu of a feeding device, a suitable connection or opening shall be provided to fill the boiler when cold. Such connection shall be no less than ½-inch pipe size for iron or steel pipe and ¼ inch for brass or copper pipe.

93.7(2) The feed pipe shall be provided with a check valve and a stop valve of a size not less than that of the pipe. The feed water may be delivered through the blowoff opening if desired.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.8(89) Blowoff. Miniature power boilers shall be equipped with a blowoff connection, not less than ½-inch pipe size, located to drain from the lowest water space practicable. The blowoff shall be equipped with a valve or cock not less than ½-inch pipe size.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.9(89) Washout openings. Miniature power boilers exceeding 12 inches internal diameter or having more than ten square feet of heating surface shall be fitted with not less than three brass washout plugs of 1-inch pipe size that shall be screwed into openings in the shell near the bottom. In miniature power boilers of the closed type system heated by removable internal electric heating elements, the openings for these elements when suitable for cleaning purposes may be substituted for washout openings. Boilers not exceeding 12 inches internal diameter and having less than ten square feet of heating surface need not have more than two 1-inch openings for cleanouts, one of which may be used for the attachment of the blowoff valve; these openings shall be opposite each other where possible. All threaded openings shall be opposite each other where possible. All threaded openings in the boiler shall be provided with a riveted or welded reinforcement to give four full threads therein.

Electric boilers of a design employing a removable top cover flange for inspection and cleaning need not be fitted with washout openings.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—93.10(89) Fixtures and fittings. All valves, pipe fittings, and appliances connected to a miniature power boiler shall be equal to at least the minimal requirements of the construction or installation code and shall be rated for not less than the maximum allowable working pressure of the miniature power boiler. In no case shall the rating be for less than 125 pounds.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

These rules are intended to implement Iowa Code chapter 89.

[Filed 7/15/59; amended 5/4/67]
[Filed 5/6/83, Notice 3/30/83—published 5/25/83, effective 7/1/83]
[Filed emergency 6/13/83—published 7/6/83, effective 7/1/83]
[Filed emergency 4/4/86—published 4/23/86, effective 4/4/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed 10/25/91, Notice 7/10/91—published 11/13/91, effective 1/1/92]
[Filed 5/16/96, Notice 11/22/95—published 6/5/96, effective 8/1/96]
[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed 3/14/01, Notice 1/24/01—published 4/4/01, effective 5/9/01]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 11/30/07, Notice 10/24/07—published 12/19/07, effective 1/23/08]
[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]

CHAPTER 94
STEAM HEATING BOILERS, HOT WATER HEATING BOILERS AND HOT WATER SUPPLY BOILERS

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 1/14/98, see Labor Services[347] Ch 46]
[Prior to 8/16/06, see 875—Ch 207]

875—94.1(89) Scope. This chapter shall apply to:

94.1(1) Steam boilers for operation at pressures not exceeding 15 psig;

94.1(2) Hot water heating boilers for operation at pressures not exceeding 160 psig or temperatures not exceeding 250° F at or near the boiler outlet;

94.1(3) Hot water supply boilers for operation at pressures not exceeding 160 psig or temperatures not exceeding 210° F at or near the boiler outlet.

875—94.2(89) Codes adopted by reference. The codes listed in 875—Chapter 91 apply to objects covered by this chapter.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—94.3(89) General requirements. This rule applies to all objects covered by this chapter and installed prior to September 20, 2006.

94.3(1) *Instruments, fittings and controls mounted inside boiler jackets.* Any or all instruments, fittings and controls required by this chapter may be installed inside of boiler jackets provided the water gage and pressure gage on a steam boiler or the thermometer and pressure gage on a water boiler are visible through an opening or openings at all times.

94.3(2) *Electrical code compliance.*

a. *Wiring.* All wiring for controls, heat-generating apparatus and other appurtenances necessary for the operation of the boiler or boilers shall be in accordance with the National Electric Code (1992). All boilers supplied with factory-mounted and factory-wired controls, heat-generating apparatus and other appurtenances necessary for the operation of the boilers shall be installed in accordance with the provisions of nationally recognized standards.

b. *Circuitry.* The control circuitry shall be grounded and shall operate at 150 volts or less. One of the two following systems may be employed to provide the control circuit:

(1) Two-wire, nominal 120-volt system with separate equipment ground conductor as follows:

This system shall consist of the line, neutral and equipment ground conductors. The control panel frame and associated control circuitry metallic enclosures shall be electrically continuous and be bonded to the equipment ground conductor.

The equipment ground conductor and the neutral conductor shall be bonded together at their origin in the electrical system for objects installed prior to September 20, 2006.

The line side of the control circuit shall be provided with a time delay fuse sized as small as practicable.

(2) Two-wire, nominal 120-volt system obtained by using an isolation transformer as follows:

The two-wire control circuit shall be obtained from the secondary side of an isolation transformer, shall be electrically continuous and shall be bonded to a convenient cold water pipe. All metallic enclosures of control components shall be securely bonded to this ground control circuit wire. The primary side of the isolation transformer will normally be a two-wire source with a potential 230, 208 or 440 volts.

Both sides of the two-wire primary circuit shall be fused. The hot leg on the load side of the isolation transformer shall be fused as small as practicable, and shall not be fused above the rating of the isolation transformer.

94.3(3) *Safety and safety relief valve discharge piping.* When a discharge pipe is used, its internal cross-sectional areas shall not be less than the full area of the valve outlet or of the total of the valve outlets discharging therein and shall be as short and straight as possible and so arranged as to avoid

undue stress on the valve or valves. When an elbow is placed on a safety valve or safety relief valve discharge pipe, the elbow shall be located close to the valve outlet.

94.3(4) *Expansion and contraction.* Provisions shall be made for the expansion and contraction of steam and hot water mains connected to boilers.

94.3(5) *Return pipe connections.* The return pipe connections of each boiler supplying a gravity-return steam heating system shall be so arranged as to form a loop so that the water in each boiler cannot be forced out below the safe water level.

94.3(6) *Feed water connections.*

a. Feed water, makeup water or water treatment shall be introduced into a boiler through the return piping system. Alternatively, makeup water or water treatment may be introduced through an independent connection. The water flow from the independent feed water connection shall not discharge against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment shall not be introduced through openings or connections provided for inspection, cleaning, safety valves, safety-relief valves, blowoffs, water columns, water gage glasses, pressure gages or temperature gages.

b. The makeup water pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or between the check valve and the return pipe system.

94.3(7) *Oil heaters.*

a. A heater for oil or other liquid harmful to boiler operation shall not be installed directly in the steam or water space within a boiler.

b. Where an external-type heater for such service is used, means shall be provided to prevent the introduction into the boiler of oil or other liquid harmful to boiler operation.

94.3(8) *Bottom blowoff or drain valve.*

a. Each boiler shall have a bottom blowoff or drain pipe connection fitted with a valve or cock connected with the lowest water space practicable, with the minimum size of blowoff piping and valves as specified below:

Minimum Required Safety or Safety-Relief Valve Capacity (Pounds of Steam Per Hour)	Size of Blowoff Valves (Inches)
Up to 500	¾
501 to 1250	1
1251 to 2500	1¼
2501 to 6000	1½
6001 and larger	2

NOTE: Multiply 1,000 by the relieving capacity in pounds of steam per hour to determine the Btu's of safety relief valve discharge capacity.

b. Any discharge piping connected to bottom blowoff or bottom drain connections shall be full size to the point of discharge.

94.3(9) *Low-water fuel cutoff.*

a. Each automatically fired hot water heating boiler shall have an automatic low-water fuel cutoff which has been designed for hot water service, and it shall be so located as to automatically cut off the fuel supply when the surface of the water falls to the level established.

b. As there is no normal waterline to be maintained in a hot water heating boiler, any location of the low-water fuel cutoff above the lowest safe permissible water level established by the boiler manufacturer is satisfactory.

c. A coil-type boiler or a watertube boiler requiring forced circulation to prevent overheating of the coils or tubes shall have a flow-sensing device installed in the outlet piping in lieu of the low-water fuel cutoff to automatically cut off the fuel supply when the circulating flow is interrupted.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—94.4(89) Steam heating boilers installed before July 1, 1960. All steam heating boilers installed before July 1, 1960, shall be constructed and installed in accordance with this rule.

94.4(1) *Safety valves.*

a. Each steam boiler shall have one or more safety valves bearing the National Board "HV" stamp of the spring-pop type adjusted and sealed to discharge at a pressure not to exceed 15 psig. Seals shall be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be set to relieve at a higher pressure than the maximum allowable working pressure of the boiler. For iron and steel bodied valves exceeding 2-inch pipe size, the drain hole or holes shall be tapped not less than 3/8-inch pipe size.

b. The safety valves shall be located in the top or side of the boiler. They shall be connected directly to a tapped or flanged opening in the boiler, to a fitting connected to the boiler by a short nipple, to a Y-base, or to a valveless header connecting steam or water outlets on the same boiler. Coil or header type boilers shall have the safety valve located on the steam outlet end. Safety valves shall be installed with their spindles vertical. The opening or connection between the boiler and any safety valve shall have at least the area of the valve inlet.

c. Safety valves ½-inch or more in diameter that are installed on a steam boiler shall have a hand-lifted device that will positively lift the disk from its seat at least 1/16 inch when there is no pressure in the boiler. The seats and disks shall be of noncorrosive material.

d. Safety valves for a steam boiler shall be at least ½ inch unless the boiler and radiating surfaces consist of a self-contained unit. Safety valves shall not be larger than 4½ inches. The inlet opening shall have an inside diameter equal to or greater than the seat diameter.

e. The minimum relieving capacity of the valve or valves shall be governed by the capacity marking on the boiler.

f. The minimum valve capacity in pounds per hour shall be equal to the steam generation as specified in 875—subrules 92.7(9) and 92.7(10).

g. The safety valve capacity for each steam boiler shall be such that with the fuel burning equipment operated at maximum capacity the pressure will not rise more than 5 percent above the maximum allowable working pressure.

h. When operating conditions are changed or additional boiler heating surface is installed, the valve capacity shall meet the new conditions.

94.4(2) *Steam gages.*

a. Each steam boiler shall have a steam gage or a compound steam gage connected to its steam space, its water column, or to its steam connection. The gage or connection shall contain a siphon or equivalent device that will develop and maintain a water seal that will prevent steam from entering the gage tube. The connection shall be so arranged that the gage cannot be shut off from the boiler except by a cock placed in the pipe at the gage and provided with a tee or lever-handle arranged to be parallel to the pipe in which it is located when the cock is open. The connections to the boiler shall be not less than ¼-inch standard pipe size, but where steel or wrought-iron pipe or tubing is used, it shall be not less than ½-inch standard pipe size. The minimum size of a siphon, if used, shall be ¼-inch inside diameter. Ferrous and nonferrous tubing having inside diameters at least equal to that of standard pipe size listed above may be substituted for pipe.

b. The scale on the dial of a steam boiler gage shall be graduated to not less than 30 psig nor more than 60 psig. The travel of the pointer from zero to 30 psig pressure shall be at least 3 inches on a compound gage, and effective stops shall be set at the limits of the gage readings on both the pressure and vacuum sides of the gage.

94.4(3) *Water gage glasses.*

a. Each steam boiler shall have one or more water gage glasses attached to the water column or boiler by means of valved fittings not less than ½-inch pipe size with the lower fittings provided with a drain valve having an unrestricted drain opening not less than ¼-inch diameter to facilitate cleaning. Gage glass replacement shall be possible under pressure. Water gage glass fittings may be attached directly to a boiler.

b. The lowest visible part of the water gage glass shall be at least 1 inch above the lowest permissible water level recommended by the boiler manufacturer. With the boiler operating at this lowest permissible water level, there shall be no danger of overheating any part of the boiler.

c. Transparent material other than glass may be used for the water gage provided that the material will remain transparent and has proved suitable for the pressure, temperature and corrosive conditions expected in service.

94.4(4) *Water column and water level control pipes.*

a. The minimum size of ferrous or nonferrous pipes connecting a water column to a steam boiler shall be 1 inch. No outlet connections, except for damper regulator, feedwater regulator, steam gages or apparatus which does not permit the escape of any steam or water, except for manually operated blowdowns, shall be attached to a water column or the piping connecting a water column to a boiler. If the water column, gage glass, low-water fuel cutoff or other water level control device is connected to the boiler by pipe and fittings, no shutoff valves of any type shall be placed in such pipe, and a cross or equivalent fitting to which a drain valve and piping may be attached shall be placed in the water piping connection at every right angle to facilitate cleaning. The water column drainpipe and valve shall be not less than ¾-inch pipe size.

b. The steam connections to the water column of a horizontal firetube wrought boiler shall be taken from the top of the shell or the upper part of the head, and the water connection shall be taken from a point not above the center line of the shell. For a cast iron boiler, the steam connection to the water column shall be taken from the top of an end section or the top of the steam header, and the water connections shall be made on an end section not less than 6 inches below the bottom connection to the water gage glass.

94.4(5) *Pressure control.*

a. In addition to the operating control for normal boiler operation, each individual, automatically fired steam heating boiler shall have a high-limit, pressure-actuated combustion control that will cut off the fuel supply to prevent the pressure from rising over 15 psig. The separate controls may have a common connection to the boiler. Upon replacement of the high-limit, pressure-actuated combustion control, controls with manual reset shall be installed.

b. In a multiple boiler installation where the operating pressure control may be installed in a header or other point common to all boilers and could be isolated from any or all of the boilers, there shall be at least one high-limit, pressure-actuated combustion control mounted on each boiler.

c. No shutoff valve of any type shall be placed in the connection to the high-limit, pressure-actuated control. The control or connections shall contain a siphon or equivalent device that will develop and maintain a water seal that will prevent steam from entering the control. The connections to the boiler shall not be less than ¼-inch standard pipe size, but where steel or wrought-iron pipe or tubing is used, the fittings shall be not less than ½-inch standard pipe size. The minimum size of a siphon, if used, shall be ¼-inch inside diameter. Ferrous and nonferrous tubing having inside diameters at least equal to that of standard pipe size listed above may be substituted for pipe where a manifold is used for a multiple control. The connection to the boiler shall not be less than ¼-inch standard pipe size.

94.4(6) *Automatic low-water fuel cutoff or water-feeding device.*

a. Each automatically fired steam or vapor system boiler shall have an automatic low-water fuel cutoff so located as to automatically cut off the fuel supply when the surface of the water falls to the lowest visible part of the water gage glass. If a water-feeding device is installed, it shall be so constructed that the water inlet valve cannot feed water into the boiler through the float chamber and so located as to supply requisite feedwater.

b. A fuel cutoff or water-feeding device may be attached directly to a boiler or in the tapped openings available for attaching a water glass directly to a boiler. Connections in the tapped openings shall be made to the boiler with nonferrous tees or "Y's" not less than ½-inch pipe size between the boiler and the water glass so that the water glass is attached directly and as closely as possible to the boiler. The run of the tee or "Y" shall take the water glass fittings, and the side outlet or branch of the tee or "Y" shall take the fuel cutoff or water-feeding device. The ends of all nipples shall be reamed to full-size diameter.

c. Fuel cutoffs and water-feeding devices embodying a separate chamber shall have a vertical straightway drainpipe and a blowoff valve not less than ¾-inch pipe size located at the lowest point in

the water equalizing pipe connections so that the chamber and the equalizing pipe can be flushed and the device tested.

94.4(7) *Stop valves for single steam heating boilers.* When a stop valve is used in the supply pipe connection of a single steam boiler, there shall be one used in the return pipe connection.

94.4(8) *Stop valves for multiple steam heating boilers.* A stop valve shall be used in each supply and return pipe connection of two or more boilers connected to a common system.

875—94.5(89) Hot water heating boilers installed before July 1, 1960. Hot water heating boilers installed before July 1, 1960, shall be constructed and installed in accordance with this rule.

94.5(1) *Safety relief valves.*

a. Each hot water heating boiler shall have at least one safety relief valve bearing the National Board "HV" stamp of the automatic-resetting type set to relieve at or below the maximum allowable working pressure of the boiler. The safety relief valve shall have pop action when tested by steam. When more than one safety relief valve is used on a hot water heating boiler, the additional valve or valves must bear the National Board "HV" stamp and may be set within a range not to exceed 6 psig above the maximum allowable working pressure of the boiler up to and including 60 psig and 5 percent for those having a maximum allowable working pressure exceeding 60 psig. Safety relief valves shall be so arranged that they cannot be reset to relieve at a higher pressure.

b. No safety relief valve shall be smaller than ¾-inch nor larger than 4½-inch standard pipe size, except those boilers having a heat input not greater than 15,000 Btu's per hour may be equipped with a safety relief valve of ½-inch standard pipe size bearing the National Board "HV" stamp. The inlet opening shall have an inside diameter equal to or greater than the seat diameter. In no case shall the minimum opening through any part of the valve be less than ½-inch diameter.

94.5(2) *Temperature and pressure gage.*

a. Each hot water boiler shall have a temperature and pressure gage properly calibrated to the altitude connected to it or to its flow connection in such a manner that it cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

b. The scale on the dial of the temperature and pressure gage shall be graduated approximately to not less than one and one-half nor more than three times the pressure at which the safety relief valve is set. The gage shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point.

c. The temperature gage shall be so located and connected that it shall be easily readable. The thermometer shall be so located that it shall at all times indicate the temperature in degrees Fahrenheit of the water in the boiler at or near the outlet.

d. Piping or tubing for temperature and pressure gage connections shall be of nonferrous metal when smaller than 1-inch pipe size.

94.5(3) *Temperature control.*

a. In addition to the operating control used for normal boiler operation, each individual, automatically fired hot water boiler shall have a separate high-limit, temperature-actuated combustion control that will cut off the fuel supply to prevent the temperature of the water from rising over 250° F. Separate controls may have a common connection to the boiler.

b. In a multiple boiler installation where the operating temperature actuated control may be installed in a header or other point common to all boilers and can be isolated from any or all of the boilers, there shall be at least one high-limit, temperature-actuated combustion control mounted on each boiler.

94.5(4) *Low-water fuel cutoff.* Rescinded IAB 11/18/09, effective 1/1/10.

94.5(5) *Stop valves.*

a. On single hot water heating boilers, stop valves shall be located at an accessible point in the supply and return pipe connections as near the boiler nozzle as is convenient and practicable to permit draining the boiler without emptying the system.

b. Where two or more boilers are connected in a common system, a stop valve shall be used in each boiler's supply and return pipe connection.

94.5(6) *Provisions for thermal expansion in hot water heating system.*

a. All hot water heating systems incorporating hot water tanks or fluid relief columns shall be so installed as to prevent freezing under normal operating conditions.

b. Systems with open expansion tanks require an indoor overflow from the upper portion of the expansion tank in addition to an open vent. The indoor overflow is to be carried within the building to a suitable plumbing fixture or to the basement.

c. An expansion tank adequate for the volume and capacity of the system shall be installed. If the system is designed for a working pressure of 30 psi or less, the tank shall be suitably designed for a minimum hydrostatic test pressure of 75 psi. Expansion tanks for systems designed to operate above 30 psi shall be constructed in accordance with ASME Code, Section VIII, Division I, in effect when installed. Provisions shall be made for draining the tank without emptying the system, except for prepressurized tanks.

d. The expansion tank capacities for gravity hot water heating systems shall be as follows:

Sq. Ft. of Installed Equivalent Direct Radiation	Tank Capacity Gallons
Up to 350	18
Up to 450	21
Up to 650	24
Up to 900	30
Up to 1100	35
Up to 1400	40
Up to 1600	2-30
Up to 1800	2-30
Up to 2000	2-35
Up to 2400	2-40
2400 and up	1 additional gallon per 33 square feet of additional equivalent direction radiation

e. The expansion tank capacities for forced hot water heating systems shall be based on an average operating water temperature of 195°F, a fill pressure of 12 psig, and a maximum operating pressure of 30 psig as follows:

System Volume, Gallons	Tank Capacity, Gallons
100	15
200	30
300	45
400	60
500	75
1,000	150
2,000	300

In calculating, include the volume of water in boiler, radiation and piping but not the expansion tank.

[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—94.6(89) Hot water supply boilers installed before July 1, 1960.

94.6(1) *Scope.* This rule establishes minimum requirements for installation, operation, and inspection of hot water supply boilers installed before July 1, 1960, when any of the following limitations are exceeded:

a. Heat input of 200,000 Btu's per hour.

b. Water temperature of 210°F.

c. A water containing capacity of 120 gallons.

94.6(2) *Safety relief valves.* Each hot water supply boiler must have at least one pressure and temperature relief valve bearing the National Board "HV" stamp installed on the hot water outlet line.

94.6(3) *Safety valves and safety relief valves for tanks and heat exchangers.*

a. When a hot water supply vessel is heated indirectly by steam in a coil or pipe, the pressure of the steam used shall not exceed the safe working pressure of the tank. A safety relief valve at least 1 inch in diameter shall be installed on the tank and shall be set to relieve at or below the maximum allowable working pressure of the tank.

b. When water over 160° F is circulated through the coils or tubes of a heat exchanger to warm the water for space heating or hot water supply, the heat exchanger shall be equipped with one or more safety relief valves bearing the National Board "HV" stamp of sufficient rated capacity to prevent the heat exchanger pressure from rising more than 10 percent above the maximum allowable working pressure of the vessel. The valves shall be set to relieve at or below the maximum allowable working pressure of the heat exchanger.

c. When water over 160° F is circulated through the coils or tubes of a heat exchanger to generate low-pressure steam, the heat exchanger shall be equipped with one or more safety valves bearing the National Board "HV" stamp of sufficient rated capacity to prevent the heat exchanger pressure from rising more than 5 psig above the maximum allowable working pressure of the vessel. The valves shall be set to relieve at a pressure not to exceed 15 psig.

94.6(4) *Gages.* Temperature and pressure gages shall be installed in accordance with 94.5(2).

94.6(5) *Temperature controls.* Temperature controls shall be installed in accordance with 94.5(3).

94.6(6) *Stop valves.*

a. Stop valves shall be placed in the supply and return pipe connections of a single hot water supply boiler installation to permit draining the boiler without emptying the system.

b. Where two or more boilers are connected in a common system, a stop valve shall be used in each boiler's supply and return pipe connection.

94.6(7) *Thermal expansion.* If a system is equipped with a check valve or pressure-reducing valve in the cold water inlet line, an airtight expansion tank or other suitable air cushion shall be installed. When an expansion tank is provided, it shall be constructed in accordance with the ASME Code, Section VIII, Division 1, in effect when installed, for a maximum allowable working pressure equal to or greater than the water heater. Except for prepressurized tanks, provisions shall be made for draining the tank without emptying the system.

These rules are intended to implement Iowa Code chapter 89.

[Filed 5/6/83, Notice 3/30/83—published 5/25/83, effective 7/1/83]
[Filed emergency 6/13/83—published 7/6/83, effective 7/1/83]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed 10/25/91, Notice 7/10/91—published 11/13/91, effective 1/1/92]
[Filed 5/16/96, Notice 11/22/95—published 6/5/96, effective 8/1/96]
[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed 3/14/01, Notice 1/24/01—published 4/4/01, effective 5/9/01]
[Filed 2/24/05, Notice 1/19/05—published 3/16/05, effective 4/20/05]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 11/30/07, Notice 10/24/07—published 12/19/07, effective 1/23/08]
[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]

CHAPTER 95
WATER HEATERS

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 1/14/98, see Labor Services[347] Ch 47]
[Prior to 8/16/06, see 875—Ch 208]

875—95.1(89) Scope. This chapter applies to water heaters supplying potable hot water when the heat input is greater than 50,000 Btu's per hour or the water-containing capacity is greater than 50 gallons. However, if the heat input is equal to or greater than 200,000 Btu's per hour or the water-containing capacity is equal to or greater than 120 gallons, 875—Chapter 94 shall apply instead of this chapter.

875—95.2(89) Recognized standard. All water heaters shall be in accordance with a recognized standard such as those promulgated by the Canadian Standards Association, American National Standards Institute Z21.10.1 and Z21.10.3, Underwriters Laboratories, American Gas Association, Gas Appliance Manufacturers Association, or the applicable ASME Code adopted by reference at rule 875—91.1(89).
[**ARC 0319C**, IAB 9/5/12, effective 10/10/12]

875—95.3(89) Installation. Water heaters shall be installed in accordance with the manufacturer's recommendations. Water heaters designed solely for heating potable water shall not be used for space heating. Water heaters designed for both space heating and potable water must comply with 875—Chapter 94. Water heaters shall not be installed for use at temperatures exceeding 210 degrees Fahrenheit or for pressures exceeding 160 psig. When the water supply to a water heater exceeds 75 percent of the design pressure of the water heater, a pressure-reducing valve is required.

875—95.4(89) Temperature and pressure relief valves. Each water heater with storage capacity shall have at least one automatically resetting temperature and pressure relief valve bearing the ASME Code symbol "HV." Water heaters with no storage capacity shall have at least one automatically resetting pressure relief device bearing the ASME Code symbol "HV," and a temperature control device recommended by the manufacturer.

95.4(1) *Materials.* All materials used in temperature and pressure relief valves shall be rated for temperatures and pressures at or greater than the maximum allowable working pressure of the water heater.

95.4(2) *Size.* The outer diameter of temperature and pressure relief valves shall not be smaller than ¾ inch. The inner diameter shall not be less than ½ inch. The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter.

95.4(3) *Capacity.* The Btu-relieving capacity of the pressure-relieving device or devices on a water heater shall be equal to or greater than the maximum Btu input rate. The relieving capacity for electric water heaters shall be at least 3,500 Btu's per hour per kilowatt input. The pressure setting shall be less than or equal to the maximum allowable working pressure of the water heater.

95.4(4) *Mounting.* Temperature and pressure relief valves shall be connected to the top of water heaters or directly to a tapped or flanged opening in the water heater. Temperature and pressure relief valves shall be installed with their spindles vertical or horizontal.
[**ARC 0319C**, IAB 9/5/12, effective 10/10/12]

875—95.5(89) Shutoff valves prohibited. Shutoff valves shall not be placed between the temperature and pressure relief valve and the water heater or on discharge pipes between such valves and the atmosphere.

875—95.6(89) Thermal expansion. Rescinded **ARC 0319C**, IAB 9/5/12, effective 10/10/12.

875—95.7(89) Stop valves. Stop valves shall be used in each supply and return pipe connection of multiple water heater installations to permit draining any heater without emptying the system.
[**ARC 0319C**, IAB 9/5/12, effective 10/10/12]

875—95.8(89) Carbonization. Carbonization and other indications of improper flame shall be corrected through adjusting and cleaning the burners in accordance with the manufacturer's recommendations.

875—95.9(89) Leaks. Water or fuel leaks from pipes, valves, and fittings are prohibited.

875—95.10(89) Flues. Exhaust flues that effectively release exhaust to the outside shall be installed. Gaps, holes and deterioration in flues are prohibited.

875—95.11(89) Tanks. Tanks integral to a water heater that exhibit bulges or leaks shall be handled as follows:

95.11(1) If the tank does not bear an ASME stamp, it shall be removed.

95.11(2) If the tank bears an ASME stamp, it shall be removed or repaired pursuant to rule 875—91.8(89).

875—95.12(89) Galvanized pipes, valves, and fittings. On water heaters without an ASME stamp, galvanized pipes, valves, and fittings may be used on water applications, provided that a dielectric union is also installed in direct contact with dissimilar metals.

These rules are intended to implement Iowa Code chapter 89.

[Filed 7/15/59]
[Filed 5/6/83, Notice 3/30/83—published 5/25/83, effective 7/1/83]
[Filed emergency 6/13/83—published 7/6/83, effective 7/1/83]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 6/27/07, Notice 5/9/07—published 7/18/07, effective 8/22/07]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]

CHAPTER 96
UNFIRED STEAM PRESSURE VESSELS

[Prior to 9/24/86, Labor, Bureau of[530] Ch 209]
[Prior to 1/14/98, see Labor Services[347] Ch 48]
[Prior to 8/16/06, see 875—Ch 209]

875—96.1(89) Codes adopted by reference. The codes listed in 875—Chapter 91 apply to objects covered by this chapter.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10]

875—96.2(89) Objects installed prior to July 1, 1983.

96.2(1) *Maximum allowable working pressure.*

a. The maximum allowable working pressure for code-stamped unfired steam pressure vessels shall be determined in accordance with the applicable provisions of the ASME Code or American Petroleum Institute Code under which they were constructed and stamped.

b. The maximum allowable working pressure on the shell of unfired steam pressure vessels without a code stamp shall be determined by the following equation.

$$\frac{TStE}{RFS} = \text{Maximum allowable working pressure, psig.}$$

Where:

TS = Ultimate tensile strength of shell plate(s), psig. When the tensile strength of a steel plate(s) is unknown, it shall be taken as 55,000 psig for temperatures not exceeding 650 degrees F.

t = Minimum thickness of shell plates of the weakest course, in inches.

E = Efficiency of longitudinal joint. For riveted joints, use ASME Code, Section 1 (1971). For fusion-welded and brazed joints, use the following table:

Single lap welded	40
Double lap welded	60
Single butt welded	60
Double butt welded	75
Forge welded	70
Brazed steel	80

R = Inside radius of the weakest course of shell or drum in inches, provided the thickness does not exceed 10 percent of the radius. If the thickness is over 10 percent of the radius, the outer radius shall be used.

FS = Factor of safety shall be four.

c. The maximum allowable working pressure for unfired steam pressure vessels without an ASME stamp subjected to external or collapsing pressure shall be determined by the ASME Code, Section VIII.

96.2(2) *Factor of safety.* Rescinded IAB 9/5/12, effective 10/10/12.

96.2(3) *End closures.* The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the formulas in ASME Code, Section VIII.

96.2(4) *Safety appliances.* Each unfired steam pressure vessel shall be protected by such safety and relief valves and indicating and controlling devices as will ensure its safe operation. Valves shall not readily be rendered inoperative. The relieving capacity of safety valves shall be such as to prevent a rise of pressure in the vessel of more than 10 percent above maximum allowable working pressure, taking into account the effect of static head. Safety valve discharges shall be carried to a safe place.
[**ARC 8283B**, IAB 11/18/09, effective 1/1/10; **ARC 0319C**, IAB 9/5/12, effective 10/10/12]

These rules are intended to implement Iowa Code chapter 89.

[Filed 7/15/59]
[Filed 5/6/83, Notice 3/30/83—published 5/25/83, effective 7/1/83]
[Filed emergency 6/13/83—published 7/6/83, effective 7/1/83]

[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed 10/25/91, Notice 7/10/91—published 11/13/91, effective 1/1/92]
[Filed 5/16/96, Notice 11/22/95—published 6/5/96, effective 8/1/96]
[Filed emergency 12/26/97 after Notice 11/19/97—published 1/14/98, effective 1/1/98]
[Filed 3/14/01, Notice 1/24/01—published 4/4/01, effective 5/9/01]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 11/30/07, Notice 10/24/07—published 12/19/07, effective 1/23/08]
[Filed ARC 8283B (Notice ARC 8082B, IAB 8/26/09), IAB 11/18/09, effective 1/1/10]
[Filed ARC 0319C (Notice ARC 0207C, IAB 7/11/12), IAB 9/5/12, effective 10/10/12]

CHAPTERS 97 to 109
Reserved

RIGHT TO KNOW

CHAPTER 110
HAZARDOUS CHEMICAL RISKS RIGHT TO KNOW—GENERAL PROVISIONS

[Prior to 9/24/86, see Labor, Bureau of[530]]
[Prior to 10/21/98, see 347—Ch 110]

875—110.1(88,89B) Purpose, scope and application.

110.1(1) *Purpose.* The purpose of Chapters 110, 120, 130, and 140 is to implement Iowa Code chapter 89B. The rules in Chapter 110 are to ensure that the hazards of all chemicals produced or imported are evaluated and that the information is transmitted to affected employers. This chapter is enforced under Iowa Code chapters 88 and 89B.

Chapter 120 provides that information concerning chemical hazards is transmitted to affected employers and employees. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets, and employee training. This chapter is enforceable under Iowa Code chapter 88.

Chapter 130 addresses the procedures for the public to gain access to information on hazardous chemicals used in the community, the administrative procedures to determine the extent of the information required to be presented, and the actions to compel the release of the information when the employer does not voluntarily release the information.

Chapter 140 addresses the procedures by which an employer submits information to the local fire department on the hazardous chemicals at the employer's workplace.

110.1(2) *Scope, application, and exemptions.* These chapters require chemical manufacturers or importers to assess the hazards of chemicals which they produce or import, and all employers, except those exempted in subrule 110.1(3), to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this section requires distributors to transmit the required information to employers. These rules apply to any chemical which is known to be present in the workplace so that employees may be exposed under normal conditions of use or in a foreseeable emergency.

110.1(3) *Exemption of employers—laboratories.* These rules apply to laboratories only as follows:

a. Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

b. Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible to laboratory employees; and

c. Employers shall ensure that laboratory employees are apprised of the hazards of chemicals in their workplaces in accordance with rule 875—120.6(88,89B).

110.1(4) *Exemption of employers—minimal exposure operations.* In working operations where employees only handle chemicals in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or retail sales), 875—Chapters 110 and 120 apply to these operations only as follows:

a. Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

b. Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals, shall obtain a material safety data sheet for sealed containers of hazardous chemicals received without a material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and

c. Employers shall ensure that employees are provided with information and training in accordance with rule 875—120.6(88,89B) except for the location and availability of the written hazard

communication program under paragraph 120.6(1)*"c,"* to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container.

110.1(5) *Exemptions.* This chapter and 875—Chapter 120 do not require labeling of the following chemicals:

a. Any pesticide as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when subject to the labeling requirements of the Act and labeling regulations issued under that Act by the Environmental Protection Agency;

b. Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in such products (e.g., flavors and fragrances), as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and regulations issued under that Act, when they are subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Food and Drug Administration;

c. Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) and regulation issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms; and

d. Any consumer product or hazardous substance as defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission.

e. These rules do not apply to:

1. Any hazardous waste as defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;
2. Tobacco or tobacco products;
3. Wood or wood products;
4. Articles;
5. Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;
6. Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposure experienced by consumers; and
7. Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), when it is in solid, final form for direct administration to the patient (i.e., tablets or pills).

This rule is intended to implement Iowa Code subsections 89B.4(1) and 89B.8(5).

875—110.2(88,89B) Definitions.

"Act" means the hazardous chemical risk right to know Act, Iowa Code chapter 455D.

"Appeal board" means the employment appeal board created under Iowa Code section 10A.601.

"Article" means a manufactured item:

1. Which is formed to a specific shape or design during manufacture;
2. Which has end use function(s) dependent in whole or in part upon its shape or design during end use; and
3. Which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

"Chemical" means any element, chemical compound, or mixture of elements or compounds.

"Chemical manufacturer" means an employer with a workplace where chemical(s) are produced for use or distribution.

"Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or

the Chemical Abstracts Service (CAS) rules of nomenclature, or name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

"Combustible liquid" means any liquid having a flash point at or above 100°F (37.8°C), but below 200°F (93.3°C), except any mixture having components with flash points of 200°F (93.3°C), or higher, the total volume of which makes up 99 percent or more of the total volume of the mixture.

"Commissioner" means the labor commissioner or designee.

"Common name" means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by chemical name.

"Compressed gas" means:

1. A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70°F (21.1°C);

2. A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C); or

3. A liquid having a vapor pressure exceeding 40 psi at 100°F (37.8°C) as determined by ASTM D-323-72.

"Container" means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of 875—Chapters 110, 120, 130, and 140, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

"Designated representative" means an individual or organization to whom an employee gives written authorization to exercise such employee's rights under 875—Chapter 120. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Distributor" means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.

"Division" means the division of labor services of the department of workforce development.

"Emergency response department" means any governmental department which might be reasonably expected to be required to respond to an emergency involving a hazardous chemical, including, but not limited to, local fire, police, medical rescue, disaster, and public health departments.

"Employee" means an individual employed by an employer in a workplace in this state who may be exposed to hazardous chemicals under normal operating conditions or foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in nonrecurring, isolated instances are not covered.

"Employer" means a person engaged in a business in this state where chemicals are either used, distributed, or produced for use or distribution including a contractor or subcontractor.

"Explosive" means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

"Exposure" or *"exposed"* means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes potential (e.g., accidental or possible) exposure.

"Flammable" means a chemical that falls into one of the following categories:

1. *"Aerosol, flammable"* means an aerosol that, when tested by the method described in 16 CFR 1500.45 (1985), yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

2. *"Gas, flammable"* means:

A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of 13 percent by volume or less; or

A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than 12 percent of volume, regardless of the lower limit;

3. *"Liquid, flammable"* means any liquid having a flash point below 100°F (37.8°C), except any mixture having components with flash points of 100°F (37.8°C) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

4. *"Solid, flammable"* means a solid, other than a blasting agent or explosive as defined in subsection 29 CFR 1910.109(a) (1984), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44 (1985), it ignites and burns with a self-sustained flame at a rate greater than 1/10 inch per second along its major axis.

"Flashpoint" means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

1. Tagliabue Closed Tester (see American National Standard Method of Test for Flash Point by Tag Closed Tester, ASTM D 56-82) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not have a tendency to form a surface film under test; or

2. Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, ASTM D 93-85) for liquids with a viscosity equal to or greater than 45 SUS at 100°F (37.8°C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

3. Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester ASTM D 3278-82E1).

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flash point determination methods specified above.

"Foreseeable emergency" means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous chemical into the workplace.

"Hazard warning" means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which conveys the hazard(s) of the chemical(s) in the container(s).

"Hazardous chemical" means any chemical which is a physical hazard or a health hazard.

"Health hazard" means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatoxins, nephrotoxins, neurotoxins, agents which act on hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A (available from the division) provides further definitions and explanations of the scope of health hazards covered by this rule, and Appendix B (available from the division) describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this chapter.

"Identity" means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.

"Immediate use" means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

"Importer" means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States.

"Information in sufficient specificity" means a list of hazardous chemicals which are consistently generated by, used by, stored at, or transported from the employer's facility. A form is not specified. The information shall be submitted on an 8½″ by 11″ page and shall include:

1. Name of the employer;
2. Name of contact person of the employer;
3. Mailing address of the employer;
4. Address of the establishment for which the information is provided; and
5. A list of the chemicals which includes:

a. Identity of the hazardous chemical;

b. NFPA numerical hazard rating in health, flammability, and reactivity as well as any information which constitutes a special hazard pursuant to NFPA 704-1980, chapter 5, for each listed chemical; and

c. Any other special hazard information from the material safety data sheets which may be relevant.

If the fire department is unable to tour the facility annually due to limits by the fire department or employer, the fire chief shall be provided upon request with the following:

1. A plane view scale diagram which shows the permanent location of each hazardous chemical within the employer's facility, as well as easily recognizable reference points such as doorways, stairs, and windows; and

2. A copy of requested material safety data sheets.

"Interested person" means any person who is requesting information from an employer, but does not include an employee of that employer.

"Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

"Material safety data sheet (MSDS)" means written or printed material concerning a hazardous chemical which is prepared in accordance with rule 875—120.5(88,89B).

"Mixture" means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

"Organic peroxide" means an organic compound that contains the bivalent-O-O-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

"Oxidizer" means a chemical other than a blasting agent or explosive as defined in 875—10.20(88), specifically 29 CFR 1910.109(a)(1985), that initiates or promotes combustion in other materials thereby causing fire either of itself or through the release of oxygen or other gases.

"Permanently stored hazardous material" means a substance that is located in an area designated by the employer or located in an area which is established through common use and practice as being the location where the hazardous chemical is stored or can be obtained.

"Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

"Produce" means to manufacture, process, formulate, or repackage.

"Pyrophoric" means a chemical that will ignite spontaneously in air at a temperature of 130°F (54.4°C) or below.

"Responsible party" means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary. A chemical manufacturer or importer shall be deemed a responsible party.

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D (available from the division) sets out the criteria to be used in evaluating trade secrets.

"Unstable (reactive)" means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure, or temperature.

"Use" means to package, handle, react, or transfer.

"Water-reactive" means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

"Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

"Workplace" means an establishment, job site, or project, at one geographical location containing one or more work areas.

This rule is intended to implement Iowa Code sections 89B.4 and 89B.8.

875—110.3(88,89B) Hazard determination.

110.3(1) Chemical manufacturers and importers shall evaluate chemicals produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required to evaluate chemicals unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for the chemical to satisfy this requirement. Employers who mix or otherwise combine chemicals are chemical manufacturers of that resultant chemical.

110.3(2) Chemical manufacturers, importers, or employers evaluating chemicals shall identify and consider the available scientific evidence concerning the hazards. For health hazards, evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in rule 110.2(88,89B). Appendix A (available from the division) shall be consulted for the scope of health hazards covered, and Appendix B (available from the division) shall be consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

110.3(3) The chemical manufacturer, importer, or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous:

a. 29 CFR Part 1910, Subpart Z, (1986) Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA); or

b. "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment," American Conference of Government Industrial Hygienists (ACGIH) (1986).

The chemical manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the chemicals in these source lists in accordance with the requirements of this chapter.

110.3(4) Chemical manufacturers, importers, and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes:

a. National Toxicology Program (NTP), "Annual Report on Carcinogens" (1982);

b. International Agency for Research on Cancer (IARC) Monographs (1982); or

c. 29 CFR Part 1910, Subpart Z, (1986) Toxic and Hazardous Substances, Occupational Safety and Health Administration.

NOTE—The "Registry of Toxic Effects of Chemical Substances" published by the National Institute for Occupational Safety and Health indicates whether a chemical has been found by NTP or IARC to be a potential carcinogen. The original document referenced in RTECS must be consulted in all instances. RTECS should be regarded as a locator document only.

110.3(5) The chemical manufacturer, importer, or employer evaluating chemicals shall determine the hazards of mixtures of chemicals as follows:

a. If a mixture has been tested as a whole to determine its hazards, results of the testing shall be used to determine whether the mixture is hazardous;

b. If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise 1 percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under subrule 110.3(4);

c. If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the chemical manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and

d. If the chemical manufacturers, importers, or employers have evidence to indicate that a component present in the mixture in concentrations of less than 1 percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established division

(OSHA) permissible exposure limit or ACGIH Threshold Limit Value (1985-1986), or could present a health hazard to employees in those concentrations, the mixture shall be assumed to present the same hazard.

110.3(6) Chemical manufacturers, importers, or employers evaluating chemicals shall describe in writing the procedures they use to determine the hazards of the chemical they evaluate. The procedures shall be made available as specified in 875—subrule 120.2(2).

875—110.4(88,89B) Labels and other forms of warning.

110.4(1) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked with the following information:

a. Identity of the hazardous chemical(s);

b. Appropriate hazard warnings; and

c. Name and address of the chemical manufacturer, importer, or other responsible party.

110.4(2) For solid metal (such as a steel beam or a metal casting) that is not exempted as an article due to its downstream use, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes. The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment. This exception to requiring labels on every container of hazardous chemicals is only for the solid metal itself and does not apply to hazardous chemicals used in conjunction with, or known to be present with, the metal and to which employees handling the metal may be exposed (for example, cutting fluids or lubricants).

110.4(3) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this rule in a manner which does not conflict with the requirements of the Hazardous Material Transportation Act (49 U.S.C. 1801 et seq.) and regulations issued under the Act by the Department of Transportation.

110.4(4) If the hazardous chemical is regulated by the division in an OSHA substance-specific health standard, the chemical manufacturer, importer, distributor, or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard.

110.4(5) The chemical manufacturer, importer, distributor, or employer need not affix new labels to comply with this rule or 875—120.4(88,89B) if existing labels already convey the required information.

875—110.5(88,89B) Material safety data sheets.

110.5(1) Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import.

110.5(2) Each material safety data sheet shall be in English and shall contain at least the following information:

a. The identity used on the label, and except as provided for in rule 110.6(88,89B) on trade secrets:

(1) If the hazardous chemical is a single substance, its chemical and common name(s);

(2) If the hazardous chemical is a mixture which has been tested as a whole to determine its hazards, the chemical and common name(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself; or

(3) If the hazardous chemical is a mixture which has not been tested as a whole:

1. The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise 1 percent or greater of the composition, except that chemicals identified as carcinogens under subrule 110.3(4) shall be listed if the concentrations are 0.1 percent or greater; and

2. The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise less than 1 percent (0.1 percent for carcinogens) of the mixture, if there is evidence that the ingredient(s) could be released from the mixture in concentrations which would exceed an established division's (OSHA) permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees; and

3. The chemical and common name(s) of all ingredients which have been determined to present a physical hazard when present in the mixture;

b. Physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point);

c. The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity;

d. The health hazards of the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical;

e. The primary route(s) of entry;

f. The division's (OSHA) permissible exposure limit, ACGIH Threshold Limit Value (1985-1986), and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the material safety data sheet, where available;

g. Whether the hazardous chemical is listed in the National Toxicology Program (NTP) "Annual Report on Carcinogens" (1982) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) "Monographs" (1982), or by the division;

h. Any generally applicable precautions for safe handling and use which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for cleanup of spills and leaks;

i. Any generally applicable control measures which are known to the chemical manufacturer, importer, or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

j. Emergency and first-aid procedures;

k. The date of preparation of the material safety data sheet or the last change to it; and

l. The name, address and telephone number of the chemical manufacturer, importer, employer, or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

110.5(3) If no relevant information is found for any given category on the material safety data sheet, the chemical manufacturer, importer, or employer preparing the material safety data sheet shall mark it to indicate that no applicable information was found.

110.5(4) Where complex mixtures have similar hazards and contents (i.e., the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture), the chemical manufacturer, importer, or employer may prepare one material safety data sheet to apply to all of these similar mixtures.

110.5(5) The chemical manufacturer, importer, or employer preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the chemical manufacturer, importer, or employer preparing the material safety data sheet becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. If the chemical is not currently being produced or imported the chemical manufacturer or importer shall add the information to the material safety data sheet before the chemical is introduced into the workplace again.

110.5(6) Chemical manufacturers or importers shall ensure that distributors and employers are provided an appropriate material safety data sheet with their initial shipment, and with the first shipment after a material safety data sheet is updated. The chemical manufacturer or importer shall either provide material safety data sheets with the shipped containers or send them to the employer prior to or at the time of the shipment. If the material safety data sheet is not provided with the shipment that has been labeled as a hazardous chemical, the employer shall obtain one from the chemical manufacturer, importer, or distributor as soon as possible.

110.5(7) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and employers. Retail distributors which sell hazardous chemicals to commercial customers shall provide a material safety data sheet to the employers upon request, and shall post a sign or otherwise inform them that a material safety data sheet is available. Chemical manufacturers, importers, and distributors need not provide material safety data sheets to retail

distributors which have informed them that the retail distributor does not sell the product to commercial customers or open the sealed container to use it in their own workplaces.

875—110.6(88,89B) Trade secrets.

110.6(1) The chemical manufacturer, importer or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that:

a. The claim that the information withheld is a trade secret can be supported;

b. Information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;

c. The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and

d. The specific chemical identity is made available to health professionals, employees, and designated representatives, in accordance with the applicable provisions of this rule.

110.6(2) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of subrules 110.6(3) and 110.6(4), as soon as circumstances permit.

110.6(3) In nonemergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under subrule 110.6(1), to a health professional (i.e., physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse), providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

a. The request is in writing;

b. The request describes with reasonable detail one or more of the following occupational health needs for the information:

(1) To assess the hazards of the chemicals to which employees will be exposed;

(2) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

(3) To conduct preassignment or periodic medical surveillance of exposed employees;

(4) To provide medical treatment to exposed employees;

(5) To select or assess appropriate personal protective equipment for exposed employees;

(6) To design or assess engineering controls or other protective equipment for exposed employees; and

(7) To conduct studies to determine the health effects of exposure.

c. The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in 110.6(3)*"b"*:

(1) The properties and effects of the chemical;

(2) Measures for controlling workers' exposure to the chemical;

(3) Methods of monitoring and analyzing worker exposure to the chemical; and

(4) Methods of diagnosing and treating harmful exposures to the chemical;

d. The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and

e. The health professional, and the employer or contractor of the services of the health professional (i.e., downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other

than to the division, as provided in subrule 110.6(6), except as authorized by the terms of the agreement or by the chemical manufacturer, importer, or employer.

110.6(4) The confidentiality agreement authorized by 110.6(3)*"d"*:

a. May restrict the use of the information to the health purposes indicated in the written statement of need;

b. May provide appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable preestimate of likely damages; and

c. May not include requirements for the posting of a penalty bond.

110.6(5) Nothing in 875—Chapters 110 and 120 is meant to preclude the parties from pursuing noncontractual remedies to the extent permitted by law.

110.6(6) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to the division, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, the disclosure.

110.6(7) If the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

a. Be provided to the health professional, employee, or designated representative, within 30 days of the request;

b. Be in writing;

c. Include evidence to support the claim that the specific chemical identity is a trade secret;

d. State the specific reasons why the request is being denied; and

e. Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

110.6(8) The health professional, employee, or designated representative whose request for information is denied under subrule 110.6(3) may refer the request and the written denial of the request to the division for consideration.

110.6(9) When a health professional, employee, or designated representative refers the denial to the division under subrule 110.6(8), the division shall consider the evidence to determine if:

a. The chemical manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;

b. The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and

c. The health professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.

110.6(10) If the division determines that the specific chemical identity requested under subrule 110.6(3) is not a bona fide trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by the division.

If a chemical manufacturer, importer, or employer demonstrates to the division that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the commissioner may issue an order or impose additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to ensure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer.

110.6(11) If a citation for a failure to release specific chemical identity information is contested by the chemical manufacturer, importer, or employer, the matter will be adjudicated before the appeal board in accordance with the enforcement scheme established in Iowa Code chapter 88 and the applicable appeal board rules. In accordance with appeal board rules, when a chemical manufacturer, importer, or employer continues to withhold the information during the contest, the appeal board may review the

citation and supporting documentation in camera or issue appropriate orders to protect the confidentiality of the matters.

110.6(12) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer, or employer shall, upon request, disclose to the commissioner any information which this rule requires the chemical manufacturer, importer, or employer to make available. Where there is a trade secret claim, the claim shall be made no later than at the time the information is provided to the commissioner so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

110.6(13) Nothing in this rule shall be construed as requiring disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

875—110.7 Rescinded IAB 6/15/88, effective 8/15/88.

These rules are intended to implement Iowa Code sections 89B.4, 89B.5, 89B.8, and 89B.11.

[Filed 3/21/86, Notice 12/18/85—published 4/9/86, effective 5/25/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86][1]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed 5/27/88, Notice 9/9/87—published 6/15/88, effective 8/15/88]
[Filed 7/8/88, Notice 5/18/88—published 7/27/88, effective 9/1/88]
[Filed emergency 8/30/88—published 9/21/88, effective 9/1/88]

[1] Two ARCs

CHAPTERS 111 to 119
Reserved

CHAPTER 120
WORKER RIGHT TO KNOW
[Prior to 9/24/86, Labor, Bureau of[530]]
[Prior to 10/21/98, see 347—Ch 120]
Rescinded IAB 2/24/99, effective 3/31/99

CHAPTERS 121 to 129
Reserved

CHAPTER 130
COMMUNITY RIGHT TO KNOW

[Prior to 9/24/86, Labor, Bureau of[530]]
[Prior to 10/21/98, see 347—Ch 130]

875—130.1(89B) Employer's duty. Upon request, an employer has a duty to inform the public of the presence of hazardous chemicals in the community and the potential health and environmental hazards that the chemicals pose. Requests shall be made during normal office hours of the employer. The employer shall provide the information or reason for refusal within ten days. If the request is from a health professional, the information shall be provided immediately.

875—130.2(89B) Records accessibility.

130.2(1) Records do not need to be accessible to the public if the information is a trade secret or the employer has notified the division in writing that certain information should not be accessible to the public for reasons that the information is not relevant to public health and safety or the release of the information is proven to cause damage to the employer.

130.2(2) Accessible records include the material safety data sheets. The employer shall also provide information concerning the quantity of each hazardous chemical stored or used. Quantity information may include the manner of purchase such as in gallon containers, barrels, tankers, etc. Additionally, the employer shall provide information specifying the quantity as less than 500 pounds, between 500 pounds and 1000 pounds, between 1000 pounds and 5000 pounds, or in excess of 5000 pounds.

130.2(3) An employer is not required to make a copy of a material data sheet if the interested person is given an opportunity to review and make notes regarding the material safety data sheet.

If an employer provides a copy of a material safety data sheet at the request of the interested person, a reasonable fee can be charged for the actual cost of copying.

875—130.3(89B) Application for exemption. To obtain an order from the commissioner pursuant to Iowa Code chapter 89B and rule 130.2(89B), an employer shall make a written application to the commissioner setting forth the specific grounds for the claimed exemption. Upon receipt of an application, the commissioner shall give the applicant notice and opportunity to be heard at a full evidentiary hearing before the commissioner.

875—130.4(89B) Burden of proof and criteria.

130.4(1) *Trade secrets.* The employer-applicant shall have the burden of proof in showing that the information claimed exempted qualifies as a trade secret.

a. At the discretion of the commissioner, official notice may be taken that similar information of the employer-applicant has been deemed a trade secret for the purpose of rule 875—110.6(88,89B) and the commissioner may summarily grant the exemption based on the official notice.

b. The criteria for determining a trade secret under this rule shall be identical to that under rule 875—110.6(88,89B).

130.4(2) *Relevance of public health and safety/damage to employer.* The employer-applicant shall have the burden of proof in showing that the information is not relevant to public health and safety or that the release of the information would damage the employer. Notification in writing by the employer is not, in and of itself, sufficient to allow the employer to obtain the exemption.

875—130.5(89B) Formal ruling. The commissioner shall issue a formal ruling upon application. The ruling shall set forth findings of fact and conclusions of law and grant or deny the application. The ruling shall be the final agency action for purposes of Iowa Code chapter 17A.

875—130.6(89B) Request for information. An interested person may request information from an employer. If the request is denied by the employer, the requesting party may then file an application for information with the division. The application will set forth the information being requested and that information was refused by the employer or that the employer denies access or that the employer

alleged that no records were kept. The applicant shall state the interest in the information requested to be received.

875—130.7(89B) Filing with division. Upon receipt of application for information, the division shall determine if the applicant has a legitimate interest, and if so, the division shall make a written demand upon the employer to provide the requested information to the division. If the employer complies, the division shall forward copies to the interested person. Requests for the information under rule 130.6(89B) will be kept confidential. The division shall not disclose the name of the interested person to any person.

875—130.8(89B) Grounds for complaint against the employer. The commissioner may cite the employer on a formal written complaint on any of the following grounds:

130.8(1) The division has not received a reply within 30 days of the request for information pursuant to rule 130.7(89B); or

130.8(2) The division finds on an IOSH inspection that the employer's records materially distort the information given the public or an emergency response group so as to pose a serious hazard to community health, environment, or emergency response personnel.

875—130.9(89B) Investigation or inspection upon complaint. Within 15 days of determining that there are grounds for a complaint, the commissioner shall either notify the employer in writing of the grounds of the complaint and request information or conduct an unannounced inspection of the employer's workplace at reasonable times and in a reasonable manner. Within 30 days of initiating an investigation or inspection, the division may find that the complaint is invalid and unfounded and shall so inform the interested person and the employer in writing.

875—130.10(89B) Order to comply.

130.10(1) If after conducting an investigation or inspection of the employer's workplace the commissioner finds that the complaint is meritorious, the commissioner shall issue an order to comply to the employer which shall set forth with specificity the employer's noncompliance with the Act or rules. The commissioner shall give the employer a period of 30 days to take remedial steps for compliance. The commissioner may establish a shorter period of time if justification is provided in the order to comply.

130.10(2) An employer may request an administrative hearing on the order to comply at any time prior to the time set forth for compliance in the order to comply.

130.10(3) If the employer has not requested a hearing, the commissioner, after the time set forth for compliance with the order to comply, may reexamine records submitted by the employer or may reinspect the premises. If the employer has not taken the necessary remedial steps required by the order to comply, the commissioner, upon notice and administrative hearing, may issue a decision on the order to comply which shall be deemed a final agency action pursuant to Iowa Code chapter 17A. The rules contained in 875—Chapter 300 are applicable to the hearing.

130.10(4) In the event that the employer fails to comply with a decision on the order to comply, the commissioner may commence an action in the Iowa district court for injunctive and other equitable relief that may be just and equitable.

875—130.11(30,89B) Relationship to Emergency Planning and Community Right-to-know Act. The requirements of this chapter are in addition to those of the Iowa emergency response commission at 605—104.3(30). Information and forms required to be submitted pursuant to Sections 311 and 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11021 and 11022, shall be sent to the Emergency Response Commission, Division of Labor, 1000 East Grand Avenue, Des Moines, Iowa 50319. The federal Tier Two Form is a mandatory reporting form under Section 312 (42 U.S.C. 11022).

875—130.12(30,89B) Information to county libraries. The commissioner will provide annually to the main library in the county seat city in each county a list of facilities and chemicals reported to the

commissioner under Section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11022. The report will be distributed by November 1 annually for the previous year's chemical inventories.

These rules are intended to implement Iowa Code section 30.7 and chapter 89B.

[Filed 3/21/86, Notice 12/18/85—published 4/9/86, effective 7/1/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/17/87, Notice 9/24/86—published 5/6/87, effective 6/10/87]
[Filed 5/27/88, Notice 9/9/87—published 6/15/88, effective 8/15/88]
[Filed 8/30/88, Notice 5/18/88—published 9/21/88, effective 11/1/88]
[Filed 10/25/91, Notice 8/7/91—published 11/13/91, effective 1/1/92]

CHAPTERS 131 to 139
Reserved

CHAPTER 140
PUBLIC SAFETY/EMERGENCY RESPONSE RIGHT TO KNOW

[Prior to 9/24/86, Labor, Bureau of[530]]
[Prior to 10/21/98, see 347—Ch 140]

875—140.1(89B) Signs required and adoption by reference. The employer shall post signs which will comply with this rule. An employer need not comply with the sign posting requirements of subrule 140.1(2) if the building, structure, or location within the building or structure does not contain a significant amount of the hazardous chemical as defined in subrule 140.4(1). The National Fire Protection Association's standard system for identifying fire hazards of chemicals based on NFPA standard 704-1980 is adopted by reference.

140.1(1) *Size.* The signs shall be at least 7½ inches on each side. The sign shall have four spaces each at least 3¾ inches on a side. Numbers and symbols within each of the four spaces shall be at least 3 inches in height.

140.1(2) *Location.* If a building or structure has a floor space of 5000 square feet or less, an employer shall post signs on the outside of the building or structure identifying the type of each hazardous chemical contained in the building or structure. If the building has more than 5000 square feet, the employer shall post a sign at the place within the building where each hazardous chemical is permanently stored to identify the type of hazardous chemical. If the hazardous chemical is moved within the building, the employer shall also move the sign or post an additional sign at the location where the hazardous chemical is moved. This subrule applies to significant amounts of a hazardous chemical as defined in subrule 140.4(1).

140.1(3) *Categories.* The signs shall identify hazards of a chemical in terms of three principal categories, namely, "health," "flammability," and "reactivity (instability)"; and indicate the order of severity numerically by five classifications ranging from four, indicating a severe hazard, to zero, indicating no special hazard. This information is to be presented by a spatial system of diagrams with "health" always being on the left; "flammability" at the top; and "reactivity (instability)" on the right. Color backgrounds and numbers are used for the three categories with blue representing "health" hazard, red representing "flammability," and yellow representing "reactivity (instability)." The fourth space shall be at the bottom and used to indicate unusual reactivity or other special hazard warnings in black and white colors.

140.1(4) *Explosives exemption.* Any building or structure, other than an explosives manufacturing building, approved for the storage of explosive materials shall have signs located so as to minimize the possibility that a bullet shot at the sign will hit the magazine.

875—140.2(89B) Employer variance applications. An employer may make application to the commissioner for less stringent sign posting requirements.

140.2(1) The employer shall make written application for a variance.

140.2(2) The employer shall have the burden of proof to show that compliance imposes an undue hardship on the employer and that the less stringent sign posting requirements as proposed by the employer offer substantially the same degree of notice and protection to emergency responders as if Iowa Code section 89B.14 were strictly applied.

140.2(3) Procedure. The employer application which shall be procedurally processed in the same manner as an application for exemption under 875—subrule 130.5(5).

875—140.3(89B) Agreement between an employer and fire department. In instances where the posting of a sign for each hazardous chemical would be ambiguous, repetitive, or where space is limited by the physical characteristics of the structure, or in situations, such as in a building, structure, or location, where a wide variety of materials may be stored having varying degrees of hazards, the identifying symbol shall indicate the most severe degree of hazard in each category except when a high hazard rating would be misleading because of the presence of an insignificant quantity of the material requiring the rating.

The employer may enter into a written agreement with the fire chief of the local fire department which provides for the posting of signs for the most hazardous chemical in each principal category as set forth in subrule 140.1(2). The agreement is subject to the approval of the division pursuant to the procedure for a variance, as specified in rule 140.2(89B). If the variance is approved, the employer shall post in the same location as the required posted signs a sign stating: "Signs not posted for all hazardous chemicals." The sign shall be in block letters at least 3 inches in height.

875—140.4(89B) Significant amounts.

140.4(1) Definition. A "significant amount" means the amount of a hazardous chemical(s) meeting any of the following criteria:

a. Any amount of a hazardous chemical which is classified as follows:

(1) A U.S. Department of Transportation Class A or Division 1.1 or 1.2 explosive;

(2) A U.S. Department of Transportation Class B or Division 1.3 explosive;

(3) A U.S. Department of Transportation Class A poison, a Division 2.3 poison gas or a Division 6.1 package group I inhalation hazard poison;

(4) Reserved;

(5) A U.S. Department of Transportation flammable solid or Division 4.3 material with a "dangerous when wet" warning;

(6) A U.S. Department of Transportation yellow III label radioactive material;

(7) An NFPA 704-1980 health rating of greater than or equal to 3;

(8) An NFPA 704-1980 flammability rating of 4; or

(9) An NFPA 704-1980 reactivity rating of 4.

b. The aggregate amount of hazardous chemicals stored, placed, or used at the building, structure, or location is greater than or equal to 25 gallons of liquid or 250 pounds of nonliquid where the numerical rating of the hazardous chemical based on the NFPA 704-1980 system meeting any of the following criteria:

(1) Health rating of greater than or equal to 2;

(2) Flammability rating greater than or equal to 3; or

(3) Reactivity rating of greater than or equal to 2.

If the hazardous chemical in both a liquid and nonliquid state, the aggregate amount measurement shall be made considering the combined poundage.

140.4(2) The requirements of this rule shall be superseded by other state or federal laws where those regulations are more restrictive.

875—140.5(89B) Information submitted to local fire department. The employer shall submit to the local fire department a list of hazardous chemicals which are consistently generated by, used by, stored at, or transported from the employer's facility. The employer shall submit updated information as it becomes available to the employer. The employer shall submit information in sufficient specificity as defined in rule 875—110.2(88,89B). This subrule shall not apply to hazardous chemicals which are not in significant amounts. The employer shall send the information by certified mail.

875—140.6(89B) Recommended communications. It is recommended that local fire departments and employers meet to collaborate on the types and amounts of hazardous chemicals as well as any unusual hazards which may be encountered by emergency response personnel.

875—140.7(89B) Procedure for noncompliance. If an employer fails to comply with the requirements of this chapter, the fire chief in the jurisdiction of the employer may file a written complaint with the commissioner.

875—140.8(89B) Notice of noncompliance. The commissioner may rely on the information provided by the fire chief and immediately issue a notice of noncompliance to the employer.

140.8(1) Opportunity for hearing. The notice of noncompliance shall be sent by certified mail and shall set forth that the employer may have an opportunity to be heard, upon demand by the employer.

In the event the employer demands a hearing, the commissioner may conduct an investigation or an inspection pursuant to 875—Chapter 3.

140.8(2) In the event the employer does not demand a hearing within 30 days of the receipt of notice of noncompliance, the commissioner shall, without further notice, issue an order for compliance which shall be a final agency action pursuant to Iowa Code chapter 17A.

140.8(3) In the event the issue of noncompliance comes for hearing before the commissioner, the commissioner may, at the conclusion of the hearing, issue an order for compliance which shall be a final agency action pursuant to Iowa Code chapter 17A or dismiss the complaint. Any hearing shall be conducted pursuant to the rules contained in 875—Chapter 300.

875—140.9(30,89B) Relationship to Emergency Planning and Community Right-to-know Act. The requirements of this chapter are in addition to those of the Iowa emergency response commission at 605—104.3(30). Information and forms required to be submitted pursuant to Sections 311 and 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11021 and 11022, shall be sent to the Emergency Response Commission, Division of Labor, 1000 East Grand Avenue, Des Moines, Iowa 50319. The federal Tier Two Form is a mandatory reporting form under Section 312 (42 U.S.C. 11022) and is to be submitted annually by March 1 for the inventory of chemicals from the previous year.

These rules are intended to implement Iowa Code section 30.7 and chapter 89B.

[Filed 3/21/86, Notice 12/18/85—published 4/9/86, effective 11/1/86]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86][1]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 5/27/88, Notice 9/9/87—published 6/15/88, effective 8/15/88]
[Filed 7/8/88, Notice 5/18/88—published 7/27/88, effective 9/1/88]
[Filed 8/30/88, Notice 5/18/88—published 9/21/88, effective 11/1/88]
[Filed 10/25/91, Notice 8/7/91—published 11/13/91, effective 1/1/92]
[Filed 11/25/92, Notice 10/8/92—published 12/23/92, effective 1/27/93]

[1] Two ARCs

CHAPTERS 141 to 149
Reserved

CONSTRUCTION—REGISTRATION AND BONDING

CHAPTER 150
CONSTRUCTION CONTRACTOR REGISTRATION

[Prior to 10/21/98, see 347—Ch 150]

875—150.1(91C) Scope. This chapter implements Iowa Code chapter 91C. The rules in this chapter apply to all construction contractors, except for a person who earns less than $2,000 annually or who performs work or has work performed on the person's own property.

875—150.2(91C) Definitions.

"Commissioner" means the labor commissioner of the division of labor services of the workforce development department or the commissioner's designee.

"Construction" means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites which may be dispersed geographically. Examples of construction activities, adopted by reference, are in 871—23.82(96) for purposes of the Iowa employment security law. For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, "construction" includes asbestos abatement.

"Contractor" means a person who engages in the business of construction as the term is defined in 871—23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors. Also included are persons who conduct or perform construction on an incidental or occasional basis, regardless of whether the person is classified as being engaged in construction by the unemployment insurance services division of the workforce development department.

"Division" means the division of labor services of the workforce development department.

"File" means deliver to the division.

"Out-of-state contractor" means a contractor whose principal place of business is in another state, and who contracts to perform construction in this state.

"Principal place of business" means the state in which a substantial part of the contractor's business is transacted and from which the centralized supervision is exercised. Factors to be reviewed include:

1. State designated as home office on documents filed with governmental agencies.
2. State where payroll is prepared.
3. State where business transactions are performed.
4. State where officers, owners, or partners reside and work.
5. State in which bank accounts are located.
6. State in which fixed business property is located.
7. State where management decisions are made.

"Same phase of construction" means in the same type of construction operations or trade, such as, but not limited to, electrical work; masonry, stonework, tile setting and plastering; roofing; sheet metal work; excavation work; concrete work; glasswork; painting, paper hanging and decorating; plumbing, heating and air conditioning work; carpentry work; and miscellaneous special trade contractors.

"Working days" means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

[**ARC 8812B**, IAB 6/2/10, effective 7/1/10; **ARC 8984B**, IAB 8/11/10, effective 9/15/10]

875—150.3(91C) Registration required. Before performing any construction work in this state, a contractor shall be registered with the division. A joint venture is an independent entity and shall be registered independently.

875—150.4(91C) Application. Each contractor shall file an application with the division for a registration number on forms provided by the division. The application shall contain the applicable information and documents specified in this rule.

150.4(1) *Name.* The name of the contractor.

150.4(2) *Place of business.* The complete mailing address of the principal place of business of the contractor.

150.4(3) *Telephone number.* The business telephone number of the contractor.

150.4(4) *Business classification.* The type of business entity of the contractor (i.e., corporation, partnership, sole proprietorship, trust, etc.).

150.4(5) *Ownership information.*

a. If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation.

b. If the contractor is other than a corporation, the name, address, and telephone number of each owner.

150.4(6) *Workers' compensation coverage information.*

a. A certificate of insurance from the insurer showing proof of workers' compensation insurance, the effective dates of coverage, and listing the division of labor as a certificate holder;

b. Employer's release from the insurance requirements under workers' compensation law form provided to self-insured employers by the commissioner of insurance under Iowa Code section 87.11; or

c. A statement that the contractor is not required to carry workers' compensation coverage.

150.4(7) *Account number.* The employer account number or special contractor number issued by the unemployment insurance services division of the workforce development department prior to making application for a contractor's registration number.

150.4(8) *Business description.* A description of the business to include:

a. The employer's North American Industry Classification System (NAICS) code; or

b. The principal products and services provided.

150.4(9) *Fee exemption.* An exemption from fee may be requested if the contractor meets the requirements of and provides information specified in subrule 150.6(3).

150.4(10) *Social security number.* The contractor, if a natural person, shall include the contractor's social security number.

150.4(11) *Out-of-state contractor bond.* An out-of-state contractor shall:

a. File a surety bond in the amount of $25,000 for a one-year period that is prepared using the bond form provided by the division, or

b. Provide a copy of a letter from the Iowa department of transportation stating that the contractor is prequalified to bid on projects for the department of transportation pursuant to Iowa Code section 314.1.

[**ARC 8812B**, IAB 6/2/10, effective 7/1/10; **ARC 8984B**, IAB 8/11/10, effective 9/15/10]

875—150.5(91C) Amendments to application.

150.5(1) A contractor shall report to the commissioner any change in the information originally reported on or with the application within 15 working days of the change, except that the contractor shall notify the commissioner of changes to workers' compensation coverage within ten days prior to any change in coverage.

150.5(2) After the time specified in subrule 150.5(1), with good cause shown the commissioner may determine that an amendment may be made to correct an application.

150.5(3) Amendments to applications shall not be permitted where a change occurs in the business classification, such as, but not limited to, a change from a sole proprietorship to a corporation.

875—150.6(91C) Fee.

150.6(1) *New applications.* A new application deposited in the U.S. mail shall be accompanied by the fee effective on the date the application is postmarked. A new application delivered in any other manner shall be accompanied by the fee effective on the date the application is received by the division.

150.6(2) *Renewal applications.* A timely renewal application shall be accompanied by the fee effective on the expiration date of the contractor's expiring registration. An application for renewal deposited in the U.S. mail after the expiration date of the contractor's expiring registration shall be accompanied by the fee effective on the date the application is postmarked. An application for renewal delivered to the division in a manner other than U.S. mail and after the expiration date of the contractor's expiring registration shall be accompanied by the fee effective on the date the application is received by the division.

150.6(3) *Fee exemption.* A contractor shall not be required to pay the fee if the application is submitted with a completed and accurate Fee Exemption Application Form. The Fee Exemption Application Form is available from the division.

150.6(4) *Amendments to applications.* A fee is not required for a permissible amendment to an application.

[**ARC 7876B**, IAB 6/17/09, effective 7/1/09; **ARC 8035B**, IAB 8/12/09, effective 9/16/09]

875—150.7(91C) Registration number issuance. Within 30 days of receipt of a completed application, the commissioner will issue to the contractor a registration number. The registration number will consist of the letter "C" followed by six unique digits.

875—150.8(91C) Workers' compensation insurance cancellation notifications.

150.8(1) *Insurance company coverage.* The division shall be notified by the insurance company carrying the contractor's workers' compensation insurance at the time of cancellation. The notice shall contain:

a. The name of the insurance carrier;

b. The name of the insured contractor; and

c. The date the workers' compensation coverage cancellation is effective.

150.8(2) *Self-insured contractors.* The contractor shall notify the division ten days prior to any cessation in self-insurance.

150.8(3) *Noninsured contractors.* The contractor shall notify the division whenever the required notice is not posted or in any change in insurance status.

875—150.9(91C) Investigations and complaints.

150.9(1) *Investigations.* Investigations may take many forms to determine if there is compliance with the law. Investigations shall take place at the times and in the places as the commissioner may direct. The commissioner may interview persons at the work site and utilize other reasonable investigatory techniques. The conduct of the investigation shall be such as to preclude unreasonable disruption of the operations of the work site. Investigations may be conducted without prior notice by correspondence, telephone conversations, or review of materials submitted to the division. At the initiation of an investigation at the contractor's establishment, the investigator shall present credentials, explain the nature and purpose of the investigation, and seek the consent of the owner, operator or agent in charge of the establishment. In the event the investigator is not permitted to fully conduct an investigation, the commissioner may seek an administrative warrant, if necessary.

150.9(2) *Complaints.* Complaints in which the complainant provides a name and address made to the commissioner in writing shall receive a written response as to the results of the investigation. A complainant's name and other identifying information shall not be released if the complaint was included as a part of another complaint where the complainant's identity would be protected under other statutes or rules (i.e., a complaint filed under both Iowa Code chapters 88 and 91C).

875—150.10(91C) Citations/penalties and appeal hearings.

150.10(1) *Citations.* The commissioner shall issue a citation to a contractor where an investigation reveals the contractor has violated:

a. The requirement that the contractor be registered;

b. The requirement that the contractor's registration information be substantially complete and accurate; or

c. The requirement that an out-of-state contractor file a bond with the division.

150.10(2) *Penalties.* If a citation is issued, the commissioner shall notify the contractor by certified mail of the proposed administrative penalty, if any. The administrative penalties shall be not more than $500 in the case of the first violation and not more than $5,000 per violation in the case of a second or subsequent violation. In proposing a penalty, due consideration will be given to knowledge of the alleged violation, knowledge of requirements of the law, and nature and extent of the alleged violation.

150.10(3) *Appeal.* The contractor shall have 15 working days within which to file a notice of contest of the citation or proposed penalty. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.10(4) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to administrative hearings on citations and penalties.

875—150.11(91C) Revocation of registrations and appeal hearings.

150.11(1) *Reason for revocation.* The commissioner shall seek revocation of a contractor's registration where an investigation reveals the contractor failed to meet the conditions of registration at the time of issuance or no longer meets the conditions.

150.11(2) *Notice of revocation.* The commissioner shall serve a notice of intent to revoke on the contractor by personal service or by restricted certified mail to the address listed in the application or by other service as permitted in the Iowa Rules of Civil Procedure. The notice shall set the time for a fact-finding hearing conducted in accordance with Iowa Code chapter 17A.

150.11(3) *Hearing.* The purpose of the fact-finding hearing is to ensure the contractor is not in compliance before the registration is revoked. All hearings shall be held in the offices of the division. A telephone interview may be conducted upon request.

150.11(4) *Hearing procedures.* Administrative hearing rules at 875—Chapter 1 shall be applicable to the fact-finding hearings.

150.11(5) *Decision.* The commissioner shall serve the decision on the contractor by certified mail to the address listed on the application or to another address provided by the contractor. If the certified mail is returned unclaimed or undelivered, the commissioner shall send the decision to the address by first-class mail.

150.11(6) *Effective date of revocation.* Revocations shall become effective 21 days after certified mailing of the decision.

150.11(7) *Suspension.* The division and the commissioner find the public health, safety or welfare imperatively requires emergency action where a construction contractor fails to maintain compliance with the laws of this state relating to workers' compensation as required in subrule 150.4(6) due to the financial impact upon the public and any worker who might be injured. Therefore, a construction contractor's registration may be suspended effective upon issuance of the subrule 150.11(2) notice of revocation. Upon application showing good cause and proof of compliance with the workers' compensation laws as required in subrule 150.4(6), the commissioner may alter the finding and temporarily reinstate a registration number pending hearing on the revocation. In cases of suspension pending a revocation hearing, the hearing shall be instituted and determined promptly.

150.11(8) *Appeal.* The contractor shall have 15 working days from receipt of the decision issued pursuant to subrule 150.11(5) to file a notice of contest of decision. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.11(9) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to appealed decisions.

150.11(10) *Effect of revocation.* A contractor whose registration is revoked may reapply for a new registration number if all requirements for registration eligibility are met.

150.11(11) *Relinquishing registration certificate.* A contractor shall return the original registration certificate to the division when a revocation or suspension becomes final.

875—150.12(91C) Concurrent actions. Actions under rules 875—150.10(91C) and 150.11(91C) may proceed at the same time against a contractor.

875—150.13(91C) Out-of-state contractor bonds. Rescinded IAB 6/2/10, effective 7/1/10.

875—150.14(91C) Project bonds. Rescinded IAB 6/2/10, effective 7/1/10.

875—150.15(91C) Blanket bonds. Rescinded IAB 6/2/10, effective 7/1/10.

875—150.16(91C) Bond release.

150.16(1) *Notifications.* Prior to releasing a bond, the commissioner will notify the department of revenue, the unemployment insurance services division of the workforce development department, and applicable state subdivisions of the intent to release the bond. The commissioner shall provide ten days for the filing of objections to the release of the bond. The commissioner may deem any failure to respond to the notice within the time provided as an approval of the release.

150.16(2) *Conditions for release.* A bond shall not be released until the contractor has made payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and fees, which may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract or approval for the release is obtained from the appropriate agencies.

These rules are intended to implement Iowa Code chapter 91C as amended by 2010 Iowa Acts, House File 2522.

[Filed 12/9/88, Notice 10/5/88—published 12/28/88, effective 2/15/89[1]]
[Filed emergency 4/26/89—published 5/17/89, effective 4/26/89]
[Filed 10/26/89, Notice 5/17/89—published 11/15/89, effective 12/29/89][◊]
[Filed 2/7/97, Notice 8/14/96—published 2/26/97, effective 4/4/97]
[Filed emergency 5/4/99 after Notice 3/24/99—published 6/2/99, effective 7/1/99]
[Filed emergency 6/28/06—published 7/19/06, effective 7/1/06]
[Filed 11/3/06, Notice 9/27/06—published 11/22/06, effective 1/1/07]
[Filed 11/30/06, Notice 7/19/06—published 12/20/06, effective 1/24/07]
[Filed emergency 6/25/08—published 7/16/08, effective 6/25/08]
[Filed Emergency ARC 7876B, IAB 6/17/09, effective 7/1/09]
[Filed ARC 8035B (Notice ARC 7875B, IAB 6/17/09), IAB 8/12/09, effective 9/16/09]
[Filed Emergency ARC 8812B, IAB 6/2/10, effective 7/1/10]
[Filed ARC 8984B (Notice ARC 8818B, IAB 6/2/10), IAB 8/11/10, effective 9/15/10]

◊ Two or more ARCs

1 Effective date (2/15/89) delayed 70 days by the Administrative Rules Review Committee at its January 5, 1989, meeting.

CHAPTERS 151 to 154
Reserved

CHAPTER 155
ASBESTOS REMOVAL AND ENCAPSULATION

[Prior to 10/18/00, see 875—Chs 81 and 82]

875—155.1(88B) Definitions.

"Asbestos" means material containing at least 1 percent by weight of chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos or any combination of these minerals. Chemical treatment or alteration does not exempt the material from this definition.

"Asbestos project" means any activity involving the removal or encapsulation of friable asbestos materials, other releases of asbestos such as by the operation of hand-operated or power-operated tools that may produce or release fibers of asbestos, or other substantial alteration of asbestos-containing, nonfriable material.

"Business entity" means a partnership, firm, association, corporation, sole proprietorship, or other business concern. A business entity that uses its own employees in removing or encapsulating asbestos for the purpose of renovating, maintaining or repairing its own facilities is not included.

"Contractor/supervisor" means a person who supervises workers on asbestos projects or a person who enters into contracts to perform asbestos projects and personally completes the work.

"Division" means the division of labor services.

"Friable asbestos material" means any material containing more than 1 percent asbestos by weight and that can be crumbled, pulverized, or reduced to powder by hand pressure when dry.

"Inspector" means a person who inspects for asbestos-containing building materials in a school or a public or commercial building.

"License" means an authorization issued by the division permitting an individual to be employed as a worker, contractor/supervisor, inspector, management planner, or project designer.

"Management planner" means a person who prepares asbestos management plans for a school building.

"Permit" means an authorization issued by the division permitting a business entity to remove or encapsulate asbestos.

"Project designer" means a person who designs asbestos response or maintenance projects for a school or a public or commercial building.

"Worker" means a person who performs response or maintenance activities on one or more asbestos projects.

"Working days" means Monday through Friday including holidays that fall on Monday through Friday. The first working day shall be the date of actual delivery or the postmark date, whichever is earlier. However, documents with Saturday or Sunday postmark dates will be treated as though postmarked on the following Monday.

875—155.2(88B) Permit application procedures.

155.2(1) *Application.* To apply for or to renew a permit, a business entity shall submit a completed application, Form 309-6504, to the division. All requested applicable information and attachments must be provided. A $500 nonrefundable application fee shall accompany each permit application.

155.2(2) *Action on application.* A new permit shall be valid for one year from the date of issuance. A renewal permit shall be valid for one year from the expiration date of the applicant's prior permit. A permit may be denied for the reasons set forth in rule 155.8(17A,88B,252J,261) or if the application package is incomplete. Within 60 days of receiving a completed application package for a new permit, the division will issue a permit or deny the application. Within 30 days of receiving a completed application package for a permit renewal, the division will issue a permit or deny the application. Applications received after expiration of a prior permit will be considered applications for new permits rather than renewals.

875—155.3(88B) Other asbestos regulations. Regulation of encapsulation, removal and abatement procedures are found in 875—Chapters 10 and 26 and 567—Chapter 23. Nothing in this chapter shall

be viewed as providing an exemption, waiver, or variance from any otherwise applicable regulation or statute.

875—155.4(88B) Asbestos project records. The permittee shall keep a record of each asbestos project it performs and shall make the record available to the division at any reasonable time. Records required by this rule shall be kept for at least six years. The records shall include:

155.4(1) The name, address, and license number of the individual who supervised the asbestos project and of each employee or agent who worked on the project.

155.4(2) The location and a description of the project and the amount of asbestos material that was removed.

155.4(3) The start and completion dates of each instance of removal or encapsulation.

155.4(4) A summary of the procedures that were used to comply with all applicable standards.

155.4(5) The name and address of each asbestos disposal site where the asbestos-containing waste was deposited.

155.4(6) A receipt from the asbestos disposal site indicating the amount of asbestos and disposal date.

155.4(7) Copies of reports required by 29 CFR 1926.1101(k)(3)(iii).

155.4(8) Copies of air sampling results or initial negative assessment as required by 29 CFR 1926.1101(c).

155.4(9) Material safety data sheets for all solvents used on the asbestos project.

875—155.5(88B) Ten-day notices.

155.5(1) *General.* Permittees shall notify the division at least ten working days before an asbestos project begins. A project begins when site preparations for asbestos abatement, encapsulation, or removal begin; when asbestos abatement, encapsulation, or removal begins; or when any demolition begins, whichever is sooner. Legible electronic transmissions of ten-day notices in the proper format shall be accepted.

155.5(2) *Emergency.* When there is an immediate danger to life, health or property, the permittee may file the notice within five days after beginning the project. An explanation of the emergency must be included.

155.5(3) *Format.* The notice shall be on an 8½″ by 11″ sheet of paper and shall contain the following information:

a. The name, address, and telephone number of and contact person for the permittee performing the project.

b. The name, address, and telephone number of the project.

c. A description of the structure and work to be performed, including type and quantity of asbestos-containing material.

d. The anticipated dates of the project's start and end.

e. Designation of the asbestos disposal site.

f. The signature and printed name of the person who completed the form.

g. The shift or work schedule on which the project will be performed.

155.5(4) *Disaster emergency proclamations.* For structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, the permittee shall file the notice described by this rule as early as possible, but not later than the working day following the initiation of the project.

875—155.6(88B) License application procedures.

155.6(1) *Forms.* Iowa Form 309-2068 must be used for all new and renewal asbestos license applications. The second page of the form is the respirator fit test and the third page is a physician's certification. Forms from other states may not be substituted for the Iowa form or any part thereof. Respirator fit tests and medical examinations must have occurred within the past 12 months. Only

worker and contractor/supervisor license applicants must submit the respirator fit test and physician's certification forms. Photocopies of the forms shall not be accepted.

155.6(2) *Training.* A certificate of appropriate training from a course provider approved for asbestos training by the U.S. Environmental Protection Agency must accompany all applications. Applicants for a license must be trained by training providers other than themselves. Applicants who completed initial training under a prior set of applicable rules will not be required to take another initial training course if they complete all annual refresher courses.

155.6(3) *Photographs.* Two 1″ by 1″ photographs clearly showing the applicant's face shall accompany all license applications.

155.6(4) *Worker licenses.* All persons seeking a license as an asbestos abatement worker shall complete an initial four-day training course and thereafter complete an annual one-day asbestos abatement worker refresher training course. A nonrefundable fee of $20 shall accompany the application.

155.6(5) *Contractor/supervisor licenses.* All persons seeking a license as an asbestos abatement contractor/supervisor shall complete an initial five-day training course and thereafter complete an annual one-day asbestos abatement contractor/supervisor refresher training course. A nonrefundable fee of $50 shall accompany the application.

155.6(6) *Inspector licenses.* All persons seeking a license as an asbestos inspector shall complete an initial three-day training course and thereafter complete an annual one-half-day asbestos inspector refresher training course. A nonrefundable fee of $20 shall accompany the application.

155.6(7) *Management planner licenses.* All persons seeking a license as an asbestos management planner shall complete an initial three-day inspector training course and an initial two-day management planning training course. Thereafter, an annual one-half-day asbestos inspector refresher training course plus an additional one-half-day course on management planning are required. A nonrefundable fee of $20 shall accompany the application.

155.6(8) *Abatement project designer licenses.* All persons seeking a license as an asbestos abatement project designer shall complete an initial three-day abatement project designer training course. Thereafter, an annual one-day asbestos abatement project designer refresher training course is required. A nonrefundable fee of $50 shall accompany the application.

155.6(9) *Action on application.* Within 30 days of receiving a completed application, the division will issue a license or deny the application. If a license is issued, it will expire one year from the date the training was completed. An application may be denied for the reasons set forth in rule 155.8(17A,88B,252J,261) or if the application package is incomplete.

155.6(10) *License on job site.* While conducting asbestos work that requires a license, the license or a legible copy of the license shall be in the licensee's possession at the work site. However, if the division of labor services' Web site reflects that a license has been issued to a particular person, that person may perform work consistent with the type of license issued without the license or a copy of the license for up to 14 days from the issuance date.

155.6(11) *Disaster emergency proclamations.* For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, the labor commissioner deems an individual to be licensed and authorized for asbestos abatement if all of the criteria in either paragraph *"a"* or paragraph *"b"* are met:

a. The individual contractor, supervisor, or worker makes the following immediately available on the work site:

(1) A copy of a certificate for training that was provided within the past 12 months by a course provider approved by the U.S. Environmental Protection Agency and that pertains to the work being performed;

(2) A copy of a physician's statement indicating that, consistent with 29 CFR 1910.134, a licensed physician has examined the individual within the past 12 months and approved the individual to work while wearing a respirator;

(3) Documentation of a respirator fit test consistent with 29 CFR 1910.134 within the past 12 months;

(4) A valid, current asbestos license issued by another state that pertains to the type of work being performed; and

(5) A photo identification card; or

b. The individual working as a project designer, inspector, or management planner makes the following immediately available on the work site:

(1) A copy of a certificate for training by a course provider approved by the U.S. Environmental Protection Agency and that pertains to the work being performed;

(2) A valid, current asbestos license issued by another state that pertains to the type of work being performed; and

(3) A photo identification card.

875—155.7(88B) Duplicate permits and licenses. Duplicate original permits and licenses are available from the division for a $10 fee.

875—155.8(17A,88B,252J,261) Denial, suspension and revocation.

155.8(1) *Grounds.* The division may deny an application or suspend or revoke a permit or license when an investigation reasonably determines any of the following:

a. Fraud or deception was utilized in obtaining or attempting to obtain a permit or license.

b. The qualifications for a permit or license are not met.

c. Any applicable federal or state standard for removal or encapsulation of asbestos was violated.

d. An unlicensed or untrained person was employed or allowed to work on an asbestos project.

e. The division received a certificate of noncompliance from the college student aid commission or the child support recovery unit of the department of human services.

f. Penalties or other debts are owed by the applicant to the division and are 30 days or more in arrears.

155.8(2) *Relinquishing license or permit.* A licensee or permittee must return the original license or permit to the division when a revocation or suspension becomes final.

155.8(3) *Suspension period.* Unless ordered otherwise, a suspension shall last for 12 months.

875—155.9(17A,88B) Contested cases.

155.9(1) *Scope.* This rule applies to civil penalty assessments and to denials, revocations and suspensions of asbestos licenses and permits.

155.9(2) *Procedures.* The labor commissioner shall serve a notice of intended action by restricted certified mail, return receipt requested, or by other service as permitted by Iowa Code section 17A.18. A notice of contest must be received by the labor commissioner within 20 days after service of the notice of intended action. If a notice of contest is not timely filed, the action stated in the notice of intended action shall automatically be effective. Hearing procedures for asbestos contested cases are set forth in 875—Chapter 1, Division V. However, if a contested case is based on receipt by the division of a certificate of noncompliance, procedures outlined in Iowa Code chapter 252J or 261 shall apply.

These rules are intended to implement Iowa Code chapters 17A, 88B, 252J, and 261.

[Filed 3/22/85, Notice 11/7/84—published 4/10/85, effective 5/15/85[1]]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed 4/27/88, Notice 12/30/87—published 5/18/88, effective 7/1/88]
[Filed 7/8/88, Notice 5/18/88—published 7/27/88, effective 9/1/88]
[Filed 3/17/89, Notice 9/21/88—published 4/5/89, effective 5/10/89]
[Filed emergency 5/25/89—published 6/14/89, effective 7/1/89]
[Filed 10/26/89, Notice 6/14/89—published 11/15/89, effective 12/29/89]
[Filed 4/19/91, Notices 12/26/90, 1/23/91—published 5/15/91, effective 6/19/91]
[Filed 9/19/00, Notice 3/22/00—published 10/18/00, effective 11/22/00]

[Filed 11/20/01, Notice 6/13/01—published 12/12/01, effective 1/16/02]
[Filed 11/30/06, Notice 7/19/06—published 12/20/06, effective 1/24/07]
[Filed 4/16/07, Notice 2/28/07—published 5/9/07, effective 6/13/07]
[Filed emergency 6/25/08—published 7/16/08, effective 6/25/08]

[1] Effective date of Ch 81 delayed seventy days by the Administrative Rules Review Committee.
Exception: See rule 82.11(88B).
Effective date of Ch 82 delayed seventy days by the Administrative Rules Review Committee, IAB 6/5/85.
Effective date (5/15/85) of 82.3(1*)"a"*(11) delayed by the Administrative Rules Review Committee until the expiration of forty-five calendar days into the 1986 session of the General Assembly pursuant to Iowa Code section 17A.8(9), IAB 7/31/85.

CHAPTER 156
BIDDER PREFERENCES IN GOVERNMENT CONTRACTING

875—156.1(73A) Purpose, scope and definitions. These rules institute administrative and operational procedures for enforcement of the Act. The definitions and interpretations contained in Iowa Code section 73A.21 shall be applicable to such terms when used in this chapter.

"Act" means Iowa Code section 73A.21.

"Affiliate," when used with respect to any specified person or entity, means another person or entity that, either directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control or ownership with, such specified person or entity.

"Commissioner" means the labor commissioner appointed pursuant to Iowa Code section 91.2, or the labor commissioner's designee.

"Division" means the division of labor of the department of workforce development.

"Nonresident bidder" means a person or entity that does not meet the definition of a resident bidder, including any affiliate of any person or entity that is a nonresident bidder.

"Parent," when used with respect to any specified person or entity, means an affiliate controlling such specified person or entity directly or indirectly through one or more intermediaries.

"Public body" means the state and any of its political subdivisions, including a school district, public utility, or the state board of regents.

"Public improvement" means a building or other construction work to be paid for in whole or in part by the use of funds of the state, its agencies, and any of its political subdivisions and includes road construction, reconstruction, and maintenance projects.

"Public utility" includes municipally owned utilities and municipally owned waterworks.

"Resident bidder" means a person or entity authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

"Resident labor force preference" means a requirement in which all or a portion of a labor force working on a public improvement is a resident of a particular state or country.

"Subsidiary," when used with respect to any specified person or entity, is an affiliate controlled by such specified person or entity directly or indirectly through one or more intermediaries.

[**ARC 1271C**, IAB 1/8/14, effective 2/12/14]

875—156.2(73A) Reporting of resident status of bidders.

156.2(1) *Reporting to public body.* When a contract for a public improvement is to be awarded to the lowest responsible bidder, the public body shall request a statement from each bidder regarding the bidder's resident status. The statement shall be on the form designated by the commissioner. The statement shall require the bidder to certify whether the bidder is a resident bidder or a nonresident bidder. In the case of a resident bidder, the statement shall require the resident bidder to identify each office at which the resident bidder has conducted business in the state during the previous three years and the dates on which the resident bidder conducted business at each office. In the case of a nonresident bidder, the statement shall require the nonresident bidder to identify the nonresident bidder's home state or foreign country as reported to the Iowa secretary of state, to identify each preference offered by the nonresident bidder's home state or foreign country, and to certify that, except as set forth on the form, there are no other preferences offered by the nonresident bidder's home state or foreign country. The statement shall include such additional information as requested by the commissioner. The statement must be signed by an authorized representative of the bidder. A fully completed statement shall be deemed to be incorporated by reference into all project bid specifications and contract documents with any bidder on a public improvement. Failure to provide the statement with the bid may result in the bid being deemed nonresponsive. This may result in the bid being rejected by the public body.

156.2(2) *Determining residency status.*

a. For purposes of the Act, a person or entity is a resident bidder if the person or entity:

(1) Is authorized to transact business in Iowa; and

(2) Has had one or more places of business in Iowa at which it is conducting or has conducted business in this state for at least three years immediately prior to the date of the first advertisement for the public improvement.

b. If the person or entity is a resident of a state or foreign country that has a more stringent definition than is set forth in paragraph 156.2(2)*"a"* for determining whether a person or entity in that state or country is a resident bidder, then the more stringent definition applies.

156.2(3) *Determining authorization to transact business.* A person or entity is authorized to transact business in the state if one or more of the following accurately describes the person or entity:

a. In the case of a sole proprietorship, the sole proprietor is an Iowa resident for Iowa income tax purposes;

b. In the case of a general partnership or joint venture, more than 50 percent of the general partners or joint venture parties are residents of Iowa for Iowa income tax purposes;

c. In the case of a limited liability partnership which has filed a statement of qualification in this state, the statement has not been canceled;

d. In the case of a limited liability partnership whose statement of qualification is filed in a state other than Iowa, the limited liability partnership has filed a statement of foreign qualification in Iowa and a statement of cancellation has not been filed pursuant to Iowa Code section 486A.105(4);

e. In the case of a limited partnership or limited liability limited partnership whose certificate of limited partnership is filed in this state, the limited partnership or limited liability limited partnership has not filed a statement of termination;

f. In the case of a limited partnership or a limited liability limited partnership whose certificate of limited partnership is filed in a state other than Iowa, the limited partnership or limited liability limited partnership has received notification from the Iowa secretary of state that the application for certificate of authority has been approved and no notice of cancellation has been filed by the limited partnership or the limited liability limited partnership;

g. In the case of a limited liability company whose certificate of organization is filed in this state, the limited liability company has not filed a statement of termination;

h. In the case of a limited liability company whose certificate of organization is filed in a state other than Iowa, the limited liability company has received a certificate of authority to transact business in this state and the certificate has not been revoked or canceled;

i. In the case of a corporation whose articles of incorporation are filed in this state, the corporation (1) has paid all fees required by Iowa Code chapter 490, (2) has filed its most recent biennial report, and (3) has not filed articles of dissolution;

j. In the case of a corporation whose articles of incorporation are filed in a state other than Iowa, the corporation (1) has received a certificate of authority from the Iowa secretary of state, (2) has filed its most recent biennial report with the secretary of state, and (3) has neither received a certificate of withdrawal from the secretary of state nor had its authority revoked; or

k. The person or entity is registered with the Iowa division of labor as a construction contractor pursuant to Iowa Code chapter 91C.

156.2(4) *Determining if bidder has conducted business in state.* In order to determine if a bidder has a place of business for transacting business within Iowa at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement of the public improvement, the bidder shall meet the following criteria for the three-year period prior to the first advertisement for the public improvement:

a. Continuously maintained a place of business for transacting business in Iowa that is suitable for more than receiving mail, telephone calls, and e-mails; and

b. Conducted business in the state for each of those three years and filed an Iowa income tax return, if applicable, made payments to the Iowa unemployment insurance fund, if applicable, and maintained an Iowa workers' compensation policy, if applicable, in effect for each of those three years.
[**ARC 1271C**, IAB 1/8/14, effective 2/12/14]

875—156.3(73A) Application of preference. When awarding a contract for a public improvement to the lowest responsible bidder, the public body shall allow a preference to a resident bidder as against a nonresident bidder that is equal to any preference given or required by the home state or foreign country in which the nonresident bidder is a resident without regard to whether such preferences are actually enforced by the applicable regulatory body in each state. If the bidder is a subsidiary of a parent that would be a nonresident bidder if such parent were to bid on the public improvement in its own name, then the public body shall allow a preference as against such bidder that is equal to the preference given or required by the home state or foreign country of the bidder's parent. In the instance of a labor force preference, a public body shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the home state or foreign country of the nonresident bidder, or the parent of a resident bidder if the parent would qualify as a nonresident bidder if such parent were to bid on the public improvement in its own name.

A preference shall not be applied to a subcontractor unless the home state or foreign country of the nonresident bidder to whom the contract was awarded would apply a preference to the subcontractor.

Specific methods of calculating and applying a preference shall mirror those that apply in the home state or foreign country of the nonresident bidder to whom the contract was awarded. In the event that the specific method used by the nonresident bidder's home state or foreign country cannot be determined, the calculation for a labor force preference shall include only the labor force working on the public improvement in Iowa on a regular basis calculated by pay period.
[**ARC 1271C**, IAB 1/8/14, effective 2/12/14]

875—156.4(73A) Complaints regarding alleged violations of the Act.

156.4(1) *Complaints.* Any person with information regarding a violation of the Act may submit a written complaint to the commissioner. Any complaint must provide the information required pursuant to subrule 156.4(2) or as much of such information as is reasonably practicable under the circumstances. The completed written complaint form shall be submitted to the commissioner at Labor Services Division, 1000 East Grand Avenue, Des Moines, Iowa 50319.

156.4(2) *Written complaint form.* The commissioner shall prepare a written complaint form that a person with information regarding a potential violation of the Act may submit pursuant to subrule 156.4(1). The written complaint form shall request the following information: the name, address, telephone number, and e-mail address of the complainant; the name of the bidder that is believed to have violated the Act; a description of any relationships between the complainant and the bidder; an identification of the public body to which the bidder submitted a bid; the home state or foreign country of the bidder; a description of the goods and services provided under the bid; and such additional information as requested by the commissioner.

156.4(3) *Availability of written complaint form.* The written complaint form shall be available in all division offices and on the department of workforce development's Internet Web site.
[**ARC 1271C**, IAB 1/8/14, effective 2/12/14]

875—156.5(73A) Nonresident bidder record-keeping requirements. While participating in a public improvement, a nonresident bidder from a home state or foreign country with a resident labor force preference shall make and keep, for a period of not less than three years, accurate records of all workers employed by the contractor or subcontractor on the public improvement. The records shall include each worker's name, address, telephone number if available, social security number, trade classification, and starting and ending date of employment.
[**ARC 1271C**, IAB 1/8/14, effective 2/12/14]

875—156.6(73A) Investigations; determination of civil penalty. The commissioner or an authorized designee shall cause an investigation to be made into charges of violations of the Act, including allegations set forth in a written complaint.

156.6(1) *Investigative powers.* The commissioner or the authorized designee shall have the following powers:

a. *Hearings.* The commissioner may hold hearings and investigate charges of violations of the Act.

b. *Entry into place of employment.* The commissioner may, consistent with due process of law, enter any place of employment to inspect records concerning labor force residency, to question an employer or employee, and to investigate those facts, conditions, or matters as are deemed appropriate in determining whether any person has violated the provisions of the Act. The commissioner shall only make an entry into a place of employment in response to a written complaint.

c. *Residency of workers.* The commissioner may investigate and ascertain the residency of a worker engaged in any public improvement in this state.

d. *Oaths; depositions; subpoenas.* The commissioner may administer oaths, take or cause to be taken deposition of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, registers, payrolls, and other evidence relevant to a matter under investigation or hearing.

e. *Employment of personnel.* The commissioner may employ qualified personnel as are necessary for the enforcement of Iowa Code section 73A.21. The personnel shall be employed pursuant to the merit system provisions of Iowa Code chapter 8A, subchapter IV.

f. *Request for records.* The commissioner shall require a contractor or subcontractor to file, within 10 days of receipt of a request, any records enumerated in rule 875—156.5(73A). If the contractor or subcontractor fails to provide the requested records within 10 days, the commissioner may direct, within 15 days after the end of the 10-day period, that the fiscal or financial office charged with the custody and disbursement of funds of the public body that contracted for construction of the public improvement or undertook the public improvement, to withhold immediately from payment to the contractor or subcontractor up to 25 percent of the amount to be paid to the contractor or subcontractor under the terms of the contract or written instrument under which the public improvement is being performed. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records as required by this paragraph has been satisfied.

156.6(2) *Division determination.* Upon conclusion of an investigation, the commissioner or an authorized designee shall issue a written determination to the party that was the subject of the investigation. The determination shall indicate whether or not the division finds a violation of the Act by the party. If the determination indicates that the party engaged in a violation of the Act, the determination shall also indicate the remedies the division intends to pursue as a result of the violation.

156.6(3) *Informal conference.* A party seeking review of the division's determination pursuant to this rule may file a written request for an informal conference. The request must be received by the division within 15 days after the date of issuance of the division's determination. During the conference, the party seeking review may present written or oral information and arguments as to why the division's determination should be amended or vacated. The division shall consider the information and arguments presented and issue a written decision advising all parties of the outcome of the informal conference.

[**ARC 1271C**, IAB 1/8/14, effective 2/12/14]

875—156.7(73A) Remedies. Following the conclusion of the informal conference, or following the expiration of the time in which a party may file a written request for an informal conference, the division may pursue the following remedies.

156.7(1) *Injunctive relief.* If the division determines that a violation of the Act has occurred, the division may sue for injunctive relief against the awarding of a contract, the undertaking of a public improvement, or the continuation of a public improvement.

156.7(2) *Civil penalty.* Any person or entity that violates the provisions of this chapter is subject to a civil penalty in an amount not to exceed $1,000 for each violation found in a first investigation by the division, not to exceed $5,000 for each violation found in a second investigation by the division, and not to exceed $15,000 for a third or subsequent violation found in any subsequent investigation by the division. Each violation of this chapter for each worker and for each day the violation continues constitutes a separate and distinct violation. In determining the amount of the penalty, the division shall consider the appropriateness of the penalty to the person or entity charged, upon determination of the gravity of the violation(s). The collection of these penalties shall be enforced in a civil action brought by the attorney general on behalf of the division.
[**ARC 1271C**, IAB 1/8/14, effective 2/12/14]

875—156.8(73A) Compliance with federal law. If it is determined that application of this chapter and the Act may cause denial of federal funds which would otherwise be available for a public improvement, or would otherwise be inconsistent with requirements of any federal law or regulation, the application of this chapter shall be suspended to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.
[**ARC 1271C**, IAB 1/8/14, effective 2/12/14]

875—156.9(73A) Severability. If any rule under this chapter, any portion of a rule under this chapter, or the applicability of any rule under this chapter to any person or circumstance is held invalid by a court, the remainder of these rules or the rules' applicability to other persons or circumstances shall not be affected.
[**ARC 1271C**, IAB 1/8/14, effective 2/12/14]

These rules are intended to implement Iowa Code section 73A.21.

[Filed ARC 1271C (Notice ARC 1160C, IAB 10/30/13), IAB 1/8/14, effective 2/12/14]

CHAPTERS 157 to 159
Reserved

CHAPTER 160
EMPLOYER REQUIREMENTS RELATING TO NON-ENGLISH SPEAKING EMPLOYEES

[Prior to 10/21/98, see 347—Ch 160]

875—160.1(91E) Purpose and scope. The rules in this chapter are intended to implement and clarify the division of labor's responsibilities under Iowa Code chapter 91E. These rules apply to employees employed on an hourly basis. These rules would apply to employees paid a salary, piece, task or other basis of calculation unless specifically exempted by rule 875—215.4(91D). These rules apply to employers whose total employment of employees paid on an hourly basis in this state exceeds 100.

875—160.2(91E) Definitions. The definitions in Iowa Code section 91E.1 are adopted with the following clarifications or additions:

"Act" means the non-English speaking employee services Act, Iowa Code chapter 91E.

"Applicant" means an employer, employee, or non-English speaking employee as those terms are defined in the Act.

"Business day" means those days an office is open and staffed with the person(s) capable of processing employees' requests for transportation provided in Iowa Code section 91E.3(2).

"Commissioner" means the commissioner of the division of labor services of the department of workforce development or the commissioner's designee.

"Primary" means of first rank, importance, or value.

"Work site" means a single physical location where business is conducted or where services or industrial operations are performed, for example: a factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.

875—160.3(91E) Comprehension of employment. The Act and these rules apply to employees who do not speak, read, write, or understand English to a degree necessary for comprehension of the terms, conditions, and daily responsibilities of employment. The following include, as a minimum, the terms, conditions and daily responsibilities of employment which an employee must be able to comprehend in English:

160.3(1) The minimum number of hours an employee can expect to work on a weekly basis.

160.3(2) The hourly wages of the position of employment, including the starting hourly wage.

160.3(3) All mandatory and elective benefits.

160.3(4) A description of the responsibilities and tasks of the position of employment.

160.3(5) The safety and health risks, known to the employer, to the employee involved in the position of employment.

160.3(6) Information and training on hazardous chemicals in the employee's work area.

160.3(7) Safety signs and symbols that warn of potential dangers and hazards at the work site.

160.3(8) The purpose of forms used by the employer including:

a. Orientation,

b. Insurance,

c. Accidents at the work site, and

d. Other forms the employee is required to complete or answer.

160.3(9) The employer's requirement to provide an interpreter if more than 10 percent of the employer's employees speak the same non-English language.

160.3(10) An ability to effectively communicate with a nurse or other medical personnel at the work site.

875—160.4(91E) Interpreters.

160.4(1) *Interpreter available.* An interpreter shall be made available at the work site when an employer has more than 10 percent of its employees that are non-English speaking and speak the same non-English language. At least one interpreter shall be available at each work site for each entire shift on which the non-English speaking employees are employed.

160.4(2) *Interpreters provided.* An interpreter shall be provided to all non-English speaking employees in order to comply with subrules 160.3(1) to 160.3(10).

160.4(3) *Spanish-speaking interpreters.* If a Spanish-speaking interpreter is needed, the employer shall select an interpreter from the list of interpreters developed by the commissioner. Persons on the commissioner's list will be selected from a statewide list of interpreters provided by the Spanish-speaking people commission.

160.4(4) *Interpreters for languages other than Spanish.* If an interpreter is needed for a language other than Spanish, the employer shall select an interpreter capable of interpreting information needed relative to the items listed in subrules 160.3(1) to 160.3(10).

875—160.5(91E) Community services referral agent.

160.5(1) *Referral agent available.* A referral agent shall be employed by the employer when the employer has more than 10 percent of its employees who speak the same non-English language. The employer shall provide to employees at each work site the name of the person who is designated as having the primary responsibility as the referral agent. The information shall be provided in the language of the non-English speaking employees.

160.5(2) *Referral agent's responsibilities.* The primary responsibility of the person employed as the employer's referral agent shall be to develop and maintain a list of contact persons and agencies, telephone numbers, and addresses of the community services provided in the work site's community. The referral agent shall assist non-English speaking employees in working with and through those services.

875—160.6(91E) Active recruitment of non-English speaking employees. Active recruitment includes, but is not limited to, the following:

160.6(1) Placement of employment opportunity advertising or notices in non-English publications or non-English advertising in English language publications located, or within a general circulation located in another state more than 500 miles from the place of employment;

160.6(2) Placement of employment opportunity advertising or notices through non-English radio, television, signs, posters or any other form of media located in another state more than 500 miles from the place of employment;

160.6(3) The use of any non-English language by an employer, or representative of the employer, at any point in the recruitment or hiring process; or

160.6(4) The solicitation of present or past non-English speaking employees for the purpose of recruitment or hiring of other non-English speaking employees residing in other states more than 500 miles from the work site.

875—160.7(91E) Employee's return to location of recruitment.

160.7(1) This rule applies to employees as defined in the Act who:

a. Are English and non-English speaking,

b. Were recruited from a location more than 500 miles from the work site,

c. Who resign from employment within four calendar weeks of the date of initial employment. Periods of temporary layoff shall not be included in the 28-day computation, and

d. Are employed by an employer as defined in the Act.

160.7(2) If an employee requests to return to the place of recruitment as provided in this rule, the employer shall provide public transportation at no cost to the employee. If means of public transportation is not available to the place of recruitment, the employer shall provide the transportation to the closest location to the place of recruitment. This location shall be made known to the recruit prior to hiring. If an employee requests to travel to a place other than that of recruitment, the employer is not required to provide transportation.

160.7(3) The 500-mile distance between the recruitment and work site locations shall be determined by use of official state maps in effect at the time of the recruitment.

875—160.8(91E) Inspections and investigations. This rule pertains to either the enforcement of the Act or to the granting of exemptions.

160.8(1) Inspections and investigations shall take place at the times and places as the commissioner may direct.

160.8(2) Inspections and investigations may be conducted without prior notice by correspondence, telephone conversation, review of materials submitted to the commissioner, or by a physical inspection of the work site.

160.8(3) The commissioner may interview persons at the work site and utilize other reasonable inspection or investigatory techniques.

160.8(4) Inspection or investigation shall be conducted to preclude unreasonable disruptions to the operations at the work site.

160.8(5) In the event the commissioner is not permitted to fully conduct an inspection or investigation, an administrative warrant may be sought.

875—160.9(91E) Exemptions. This rule contains procedures for the application for and granting of exemptions from the requirements of the Act or the rules in this chapter. These rules shall be construed to secure a prompt and just conclusion of proceeding subject to this rule.

160.9(1) An exemption may be granted by the commissioner where reasonable.

160.9(2) An applicant desiring an exemption shall file a written application with the commissioner which shall include:

a. The name, address and telephone number of the applicant;

b. The address or location of the work site affected;

c. A description of the operation or type of work site;

d. A listing of the section of the Act or rules to which the exemption would apply;

e. A representation of the impact of compliance on the part of the applicant;

f. A representation of why the exemption would be reasonable;

g. If the applicant is an employer, a description of how employees and non-English speaking employees have been informed of the application and their rights to petition the commissioner for a hearing;

h. If the applicant is an employee or non-English speaking employee, a description of how the employer has been informed of the application and the employer's rights to petition the commissioner for a hearing;

i. A request for a hearing, if one is desired; and

j. Any other information the commissioner may request.

160.9(3) At the time the application is received, the commissioner shall promptly provide the applicant with a notice of receipt of application which shall be posted where notices are customarily posted for employees. If the applicant is an employee or non-English speaking employee, the employer shall post the notice when provided to the employer.

160.9(4) If the applicant is an employer, any affected employee or affected non-English speaking employee may request a hearing. If the applicant is an employee or non-English speaking employee, the affected employer may request a hearing. Any request for a hearing on the application shall be done by notifying the commissioner within 14 calendar days of posting of the notice provided under subrule 160.9(3).

160.9(5) Any hearing held shall be conducted pursuant to the rules in 875—Chapter 300.

875—160.10(91E) Enforcement and penalties.

160.10(1) If the commissioner finds any violations subject to a civil penalty, the commissioner shall issue a notice of violation to the employer and propose a civil penalty which shall be sent to the employer by certified mail. The employer shall have 14 calendar days from receipt of the notice of violation or proposed civil penalty to inform the commissioner by mail of the intent to contest the notification or proposed penalty. After receipt of the employer's notification, the commissioner shall

afford the employer the opportunity for a hearing. The hearing shall be conducted pursuant to the rules in 875—Chapter 300.

160.10(2) If the commissioner finds any violations subject to a criminal penalty, the commissioner shall notify the county attorney for the county in which the violation occurred or the employer's work site is located in the county where the employee or non-English speaking employee was employed or to be employed.

These rules are intended to implement Iowa Code chapter 91E.

[Filed emergency 6/8/90—published 6/27/90, effective 7/1/90]
[Filed 11/9/90, Notice 6/27/90—published 11/28/90, effective 1/2/91]

CHAPTERS 161 to 168
Reserved

ATHLETICS COMMISSIONER

CHAPTER 169
GENERAL REQUIREMENTS FOR ATHLETIC EVENTS

875—169.1(90A) Scope and application. Unless otherwise noted, this chapter applies to each event covered by Iowa Code chapter 90A.
[**ARC 1240C**, IAB 12/11/13, effective 1/15/14]

875—169.2(90A) Prohibited events. No promoter shall arrange or advertise:

169.2(1) A match between persons of the opposite sex;

169.2(2) A match between more than two contestants; or

169.2(3) A match with a contestant who is younger than 18 years of age.
[**ARC 1240C**, IAB 12/11/13, effective 1/15/14]

875—169.3(90A) Advance notice of event. A promoter shall submit advance notice of an event, other than a professional wrestling event, to the commissioner on the form provided by the commissioner at least 60 days prior to the event but not more than six months prior to the event. The advance notice shall include:

169.3(1) The date, time, type, and location of the event;

169.3(2) The promoter's name and contact information;

169.3(3) One-half of the required event license fee set forth by subrule 169.4(2);

169.3(4) Whether the event is indoors or outdoors; and

169.3(5) Other relevant information requested by the commissioner on the form.
[**ARC 1240C**, IAB 12/11/13, effective 1/15/14]

875—169.4(90A) Event license. A promoter shall hold a mixed martial arts match, professional boxing match, or wrestling match only if the commissioner of athletics (commissioner) has issued an applicable event license.

169.4(1) *Application.* At least seven days before the event, the promoter shall submit a completed application for a license on the form provided by the commissioner.

a. For a professional wrestling event, the application shall include each of the following:

(1) The promoter's name, address, telephone number and other contact information as requested by the commissioner;

(2) The event date, venue name, and venue address;

(3) A nonrefundable $100 event license fee applicable to events held on or after May 1, 2014; and

(4) The promoter's signature.

b. For any other covered event, the application shall contain all of the following information:

(1) The date, time, type, and location of the event;

(2) The promoter's name, address, and contact information;

(3) One-half of the required event license fee set forth in subrule 169.4(2);

(4) The name, address, weight, gender, and opponent of each contestant;

(5) A copy of the medical license of the ringside physician;

(6) The date, time, and location for the weighing of the contestants;

(7) The name, contact information, and role of each proposed official;

(8) Copies of the contracts with the contestants, the emergency medical services company, and the security company;

(9) The name and contact information for the certified law enforcement officer who will attend the event;

(10) The date, time, and location of the ringside physician's examination of the contestants;

(11) Certificates of insurance as required by subrules 169.5(17) and 169.5(18);

(12) A bond in the sum of $5,000, payable to the State of Iowa, conditioned upon the payment of the tax and penalties imposed by Iowa Code chapter 90A, unless the promoter has a current valid bond on file with the division;

(13) The name and telephone number of the person designated to clean between rounds; and

(14) Other relevant information requested by the commissioner on the form.

169.4(2) *Event license fees applicable to events held on or after May 1, 2014.* For events held on or after May 1, 2014, the nonrefundable event license fee shall be $100 for a professional wrestling event and $450 for all other covered events. A professional wrestling promoter shall submit the event license fee with the event license application at least 7 days prior to the event. For all other covered events, the promoter shall submit one-half of the event license fee with the advance notice of the event at least 60 days prior to the event, and one-half of the event license fee with the event license application at least 7 days prior to the event.

169.4(3) *Issuance.* The decision to issue an event license is solely within the discretion of the commissioner. The following factors will be considered by the commissioner when deciding whether to issue an event license:

a. Date the promoter filed advance notice of event.

b. The promoter's prior compliance with Iowa Code chapter 90A and applicable rules.

c. Applications for conflicting events.

d. Ability of the commissioner to provide staff.

e. The promoter's history of canceling events.

f. Anticipated tax revenue.

g. Completeness of application package.

h. Whether the event is indoors or outdoors.

169.4(4) *Revocation.* When the commissioner finds that failure to provide adequate security to maintain public safety imperatively requires emergency action, the commissioner may immediately suspend the event license, pending license revocation procedures pursuant to Iowa Code chapter 17A.

[**ARC 1240C**, IAB 12/11/13, effective 1/15/14]

875—169.5(90A) Promoter responsibilities. The promoter of a professional wrestling event shall be responsible for subrules 169.5(1) through 169.5(6). All other promoters shall be responsible for each of the following:

169.5(1) Ensure compliance with Iowa Code chapter 90A and applicable rules.

169.5(2) Ensure that the referees are familiar with and enforce the rules.

169.5(3) Be responsible for the conduct and attendance of all officials and participants.

169.5(4) Ensure that adequate public safety is maintained at all events. Adequate personnel provided by a private security company and at least one law enforcement officer who is certified pursuant to Iowa Code chapter 80B shall be furnished by the promoter.

169.5(5) Ensure that a referee inspects the gloves, bandages, and body of each contestant for foreign substances that might be detrimental to an opponent.

169.5(6) Ensure that contestants are free of fingernails that are capable of causing injury to an opponent.

169.5(7) Provide officials and participants who are subject to approval by the commissioner.

169.5(8) Answer to the commissioner for noncompliance.

169.5(9) Be available to the commissioner throughout an event or identify a designee who shall be:

a. Available to the commissioner throughout an event; and

b. Authorized by the promoter to address issues that may arise.

169.5(10) Enter into a written contract with each contestant using the form furnished by the commissioner. Telegrams, fax transmissions, electronic mail, or letters indicating acceptance of terms will be considered an agreement between a contestant, the contestant's manager and the promoter, pending the actual signing of the contract.

169.5(11) Provide appropriate gloves.

169.5(12) Provide and maintain a container with a solution of ten parts water to one part bleach to clean bodily fluids from any part of the cage, cage enclosure, or floor.

169.5(13) Ensure that an ambulance and ambulance service authorized at the EMT-B, EMT-I, EMT-P or paramedic specialist level pursuant to 641—Chapter 132 are present at the event. A promoter is fully responsible for all charges assessed by the ambulance service related to the event except:

a. Charges covered by insurance.

b. Charges for services provided to persons other than participants and officials.

169.5(14) Ensure that contestants are wearing appropriate attire, gloves, and other necessary equipment.

169.5(15) Provide a suitable, clean, and private space for contestants to change clothes.

169.5(16) Submit to the ringside physician no later than at the time of the physicals test results showing that each contestant scheduled for the event tested negative for the human immunodeficiency, hepatitis B, and hepatitis C viruses within the one-year period prior to the event. The contestant shall not participate and the physician shall notify the promoter that the contestant is prohibited from participating for medical reasons if any of the following occurs:

a. The promoter does not produce timely proof of testing;

b. The test results are positive;

c. The laboratory is not properly certified in accordance with the federal Clinical Laboratory Improvement Act;

d. The test was performed more than 12 months prior to the event; or

e. The test results are otherwise deficient.

169.5(17) Obtain from a company authorized to do business in the state of Iowa $10,000 of health insurance coverage on each contestant to provide for medical, surgical and hospital care for injuries sustained and illnesses contracted during the event. If there is a deductible, it shall not exceed $1,500. If the contestant pays for covered care, the insurance proceeds shall be paid to the contestant or the contestant's beneficiaries as reimbursement for payment. In the event of a claim, payment of the deductible shall be the sole responsibility of the promoter.

169.5(18) Obtain from a company authorized to do business in the state of Iowa no less than $10,000 of life insurance coverage on each contestant to cover death caused by injuries sustained or illnesses contracted during the event.

169.5(19) No later than the day of the event, ensure that each contestant makes available to the commissioner's representative suitable proof of age consisting of one of the following documents:

a. A certified birth certificate;

b. A passport;

c. A certified baptismal record;

d. A U.S. visa;

e. An identification card issued to the contestant by a governmental entity and which includes the contestant's photograph and birth date; or

f. A U.S. resident alien card.

169.5(20) Ensure that participants and officials behave in a professional manner at all times.

169.5(21) Ensure that participants and officials refrain from:

a. Fighting with anyone other than a scheduled opponent;

b. Fighting outside the ring;

c. Throwing objects; and

d. Making obscene gestures.

169.5(22) Establish through www.mixedmartialarts.com that no contestant on an amateur card has participated in a reported professional mixed martial arts match.

[**ARC 1240C**, IAB 12/11/13, effective 1/15/14]

875—169.6(90A) Taxes. No later than 20 days after an event, a promoter shall file with the commissioner a report and pay all taxes due as a result of the event. The report shall be submitted on the form provided by the commissioner and shall include the promoter's business name, name of a contact for the promoter, date of the event, event license number, location of the event, each price for which tickets were offered

or sold, number of tickets sold at each price, total gate receipts, and signatures of the licensee and the person who completed the report. The promoter shall submit with the report:

169.6(1) Proof of the number of tickets sold and the price of each ticket, which shall include appropriate documentation from a ticketing service, if applicable.

169.6(2) A check made payable to the Iowa Division of Labor Services for the amount calculated using the report.

169.6(3) A check made payable to the Iowa Department of Revenue for the amount calculated using the report.

[**ARC 1240C**, IAB 12/11/13, effective 1/15/14]

These rules are intended to implement Iowa Code chapter 90A as amended by 2013 Iowa Acts, Senate File 430.

[Filed ARC 1240C (Notice ARC 1107C, IAB 10/16/13), IAB 12/11/13, effective 1/15/14]

CHAPTER 170
OPERATIONS OF ADVISORY BOARD

[Prior to 10/21/98, see 347—Ch 94]
[Prior to 8/16/06, see 875—Ch 94]

875—170.1(90A) Scope. This chapter governs the conduct of business by the Iowa athletics commissioner amateur boxing grant advisory board (board). The board shall advise the athletics commissioner (commissioner) regarding the award of grants to organizations promoting amateur boxing in this state.

875—170.2(90A) Membership. The board is composed of six voting members: three from the Iowa chapter of the golden gloves association of America, appointed by the association, and three from the Iowa chapter of the United States amateur boxing federation, appointed by the federation.

875—170.3(90A) Time of meetings. The commissioner shall establish the date of all meetings and provide notice of all meeting dates, locations, and agenda.
[**ARC 1240C**, IAB 12/11/13, effective 1/15/14]

875—170.4(90A) Notification of meetings. Notice of meetings is given by posting and distributing the agenda. The agenda for each meeting will be posted at the office of the commissioner.

875—170.5(90A) Attendance and participation by the public. All meetings are open to the public. Persons who wish to address the board on a matter on the agenda should notify the commissioner at least three days before the meeting. Iowa Code section 21.4 requires a commission to give notice of its proposed agenda. Therefore, the commissioner discourages persons from raising matters not on the agenda. Persons who wish to address the board on a matter not on the agenda should file a request with the chairperson to place the matter on the agenda of a subsequent meeting.

875—170.6(90A) Quorum and voting requirements.

170.6(1) *Quorum.* Four members constitute a quorum.

170.6(2) *Majority voting.* All votes shall be determined by a majority of the board.

170.6(3) *Voting procedures.* The commissioner shall rule as to whether the vote will be by voice vote or roll call. A roll call vote shall be taken at the request of any member of the board.

875—170.7(90A) Minutes, transcripts and recording of meetings.

170.7(1) *Recordings.* The commissioner shall record by mechanized means each meeting and shall retain the recording for at least one year. Recordings of closed sessions shall be sealed and retained at least one year.

170.7(2) *Transcripts.* Transcripts of meetings will not routinely be prepared. The commissioner will have transcripts prepared upon receipt of a request for a transcript and payment of a fee to cover its cost.

170.7(3) *Minutes.* The commissioner shall keep minutes of each meeting. Minutes shall be reviewed and approved by the board and maintained for at least five years. The approved minutes shall be signed by the commissioner.

These rules are intended to implement Iowa Code section 90A.7.

[Filed 10/10/91, Notice 8/7/91—published 10/30/91, effective 12/6/91]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed ARC 1240C (Notice ARC 1107C, IAB 10/16/13), IAB 12/11/13, effective 1/15/14]

CHAPTER 171
GRANT APPLICATIONS AND AWARDS

[Prior to 10/21/98, see 347—Ch 95]
[Prior to 8/16/06, see 875—Ch 95]

875—171.1(90A) Scope. This chapter establishes rules of the commissioner of athletics (commissioner) for the distribution of revenues collected from a professional boxing event pursuant to Iowa Code section 90A.9.

[**ARC 1240C**, IAB 12/11/13, effective 1/15/14]

875—171.2(90A) Application process.

171.2(1) The commissioner shall announce the opening of the application process by public notice.

171.2(2) All amateur boxing organizations seeking grant funds must submit an application to the commissioner on forms provided by the commissioner.

171.2(3) Contents. Each application shall contain:

a. The name and address of the applicant and the telephone number of a contact person.

b. A plan of action which details how the awarded funds will be spent and what results and benefits are expected. The action plan shall include:

(1) Grant goals, objectives, timeliness, responsible individuals, and evaluation. The grant results shall be quantifiable and measurable.

(2) Establish an end result which is beneficial to the sport of amateur boxing.

(3) Number of projected amateur boxing matches to be promoted by the applicant.

c. A budget detailing how the grant funds will be expended.

d. Assurances the applicant will comply with the conditions and procedures for grant administration.

e. A plan for evaluation.

f. Assurance the funds will not be used to retire preexisting financial obligations.

g. Assurances the applicant will comply with the conditions for financial management.

171.2(4) Applications not containing the specified information or not received by the specified date may not be considered. All applications shall be submitted in accordance with instructions in the requests for proposals. The proposals shall be submitted to the commissioner.

875—171.3(90A) Grant process.

171.3(1) All applications will be reviewed by the board. The board will recommend and advise the commissioner who shall have the final discretion to award funds.

171.3(2) The commissioner shall notify successful applicants and shall provide to each of them a contract for signature. This contract shall be signed by an official with authority to bind the applicant and shall be returned to the commissioner prior to the award of any funds under this program.

171.3(3) If the applicant and the commissioner are unable to successfully negotiate a contract, the commissioner may withdraw the award offer.

171.3(4) Applications shall be received by May 1 of each calendar year for an award the following fiscal year. Payment will be processed within 60 days of a grant award by the commissioner.

171.3(5) Grants shall be awarded for a 12-month period and may be renewed for a second year.

875—171.4(90A) Evaluation. The grantee shall cooperate with the commissioner and periodically provide requested information to determine how the goals and objectives of the project are being met.

875—171.5(90A) Termination.

171.5(1) *Cause.* The contract may be terminated in whole or in part at any time before the date of completion, whenever it is determined by the commissioner that the grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the commissioner of the reasons for the termination and the effective date. The grantee shall not incur new

obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

171.5(2) *Responsibility of grantee at termination.* Within 45 days of the termination, the grantee shall supply the commissioner with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends money for other than specified budget items approved by the commissioner, the grantee shall return moneys for unapproved expenditures.

171.5(3) *Appeals.* Any grantee aggrieved by a final decision regarding a grant award may appeal the decision by notifying the commissioner in writing within 10 days of the date of the decision. The commissioner shall issue a decision on the appeal within 60 days.

171.5(4) *Refusal to issue ruling.* The commissioner may refuse to issue a ruling or decision upon an appeal for good cause. Good cause includes, but is not limited to, the following reasons:

1. The appeal is untimely;
2. The appellant lacks standing to appeal;
3. The appeal is not in the required form or is based upon frivolous grounds;
4. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties;
5. The termination of the grant was beyond the control of the department because it was due to lack of funds available for the contract.

875—171.6(90A) Financial management.

171.6(1) *Financial documents.* The grantee shall follow standards for financial records and procedures established by the commissioner.

171.6(2) *Financial reporting.* Within 90 days of the expiration or termination of a grant, the recipient shall submit to the commissioner:

a. A full disclosure of the status of grant expenditures compared to budgeted amounts on a line item basis.

b. Expenditures shall be reported on a line item basis and any expenditure exceeding 5 percent of the line item will require the grantee to submit an amended application to the commissioner for approval. This approval must accompany the close-out report to justify any positive 5 percent deviation.

171.6(3) *Retention of records.* All financial and programmatic records, supporting documents, statistical records, and other records of the grantee which are relevant to this rule shall be maintained for three years from the starting date of the grant agreement. This time period is extended if any litigation, claim, negotiation, audit, investigation, or other action involving the records has been started before the expiration of the three-year period. The extension is for one year past the completion of all actions and resolution of all issues which resulted in the extension of the period.

171.6(4) *Access to records.* The records required by this rule shall be accessible to the commissioner, the auditor of state, or their designees for the retention period established in this rule.

875—171.7(90A) Adjustments and collections.

171.7(1) *Disallowances and adjustments.* The closeout of a grant does not affect the commissioner's right to disallow costs and recover funds on the basis of an audit or other postgrant period review or the grantee's obligation to return any funds due as a result of unexpended funds, refunds, corrections or other transactions.

171.7(2) *Collection.* Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be due under the terms of the award constitute a debt to the state of Iowa. Amounts are due within 30 days of demand.

These rules are intended to implement Iowa Code section 90A.7.

[Filed 10/10/91, Notice 8/7/91—published 10/30/91, effective 12/6/91]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed ARC 1240C (Notice ARC 1107C, IAB 10/16/13), IAB 12/11/13, effective 1/15/14]

CHAPTER 172
PROFESSIONAL WRESTLING

[Prior to 9/24/86, Athletics Commissioner[110] Ch 1]
[Prior to 10/21/98, see 347—Ch 96]
[Prior to 8/16/06, see 875—Ch 96]

875—172.1(90A) Limitation of bouts. All bouts, unless expressly approved by the commissioner, will be limited to three falls; the contestant gaining the most falls will be the winner of the bout. If there have been no falls, or if each contestant has won one fall at the end of a specified time limit, the referee will declare the bout a draw. If, at the end of a time limit of a two fall out of three bout, only one contestant has been awarded one fall, that contestant will be declared the winner. If, at the end of a time limit of a single fall bout, no falls have been awarded, the bout will be declared a draw.

875—172.2(90A) Fall. Both shoulders touching the mat at the same time and held for three consecutive seconds shall constitute a fall.

875—172.3(90A) Out-of-bounds. If a contestant works off the mat so that any part of the contestant's body is in or underneath the ropes, the referee shall order the contestants to break and place them in the center of the ring in a standing position.

875—172.4(90A) Disqualification. If a contestant crawls through the ropes or out of the ring and refuses to return at the count of ten by the referee, said contestant will be disqualified.

875—172.5(90A) Failure to break hold. If a contestant does not break a hold and take two steps backwards before continuing when ordered to do so by the referee, the referee will then count to four. If the hold is not broken the referee will award the fall or bout to the offending contestant's opponent.

875—172.6(90A) Prohibition against hanging on. No contestant will be permitted to grasp or hang onto clothing, mats or ropes for support.

875—172.7(90A) Abusing referee. Striking, pushing or in any way abusing the referee will not be allowed. After being warned by the referee, repeating of the offense by the offender will forfeit the fall or bout to the opponent.

875—172.8(90A) Prohibited materials in ring. Contestants must not take anything into the ring with them or pick up anything thrown into the ring to be used in any way to gain an advantage over an opponent.

875—172.9(90A) Contestants' grooming. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—172.10(90A) Time between falls. Following each fall the contestants may leave the ring. The timekeeper will not allow more than three minutes between the falls. If one or more of the contestants retire to the dressing rooms, five minutes will be granted.

875—172.11(90A) Contestants' arrival. All wrestling contestants must be on the premises where the bout is to be held at least one-half hour before the start of the card.

875—172.12(90A) Contestants of the opposite sex prohibited. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—172.13(90A) Separation of boxing and wrestling. No boxing bouts shall be permitted in any professional wrestling show, nor shall any wrestling bouts be permitted in any boxing show.

875—172.14(90A) Public safety. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—172.15(90A) Health of wrestler. The promoter shall ensure that no wrestler shall be permitted to wrestle who is suffering from any illness or disability which in any way interferes with or prevents the wrestler from giving a full, complete and satisfactory exhibition of ability and skill, or endangers the wrestler's health or the health of the wrestler's opponent.

875—172.16(90A) Wrestling outside of ring. All wrestling must take place within the ropes and no wrestler shall deliberately leave the enclosed ring during the course of an exhibition or contest in pursuit of another wrestler.

875—172.17(90A) Advertising. All professional wrestling programs under the supervision and the authority of the commissioner are exhibitions only and not contests. All wrestling can only be advertised or announced as exhibitions, unless a special license is issued for a contest.

875—172.18(90A) Responsibility of promoter. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

These rules are intended to implement Iowa Code chapter 90A.

[Filed 2/9/71]

[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

[Filed ARC 1240C (Notice ARC 1107C, IAB 10/16/13), IAB 12/11/13, effective 1/15/14]

NOTE: For the first line of history, see Athletics Commissioner[110] Ch 1.

CHAPTER 173
PROFESSIONAL BOXING

[Prior to 9/24/86, Athletics Commissioner[110] Ch 2]
[Prior to 10/21/98, see 347—Ch 97]
[Prior to 8/16/06, see 875—Ch 97]

875—173.1(90A) Limitation of rounds. Ten rounds shall be the maximum number of rounds for a boxing bout, except for a championship match which may not exceed 15 rounds. Three minutes of boxing will constitute a round, or by special permission of the commissioner, two minutes. There shall be a rest period of one minute between rounds.

875—173.2(90A) Weight restrictions. Permission must be received from the commissioner before a contestant will be permitted to box an opponent 18 pounds heavier than the boxer in the welterweight or middleweight classes, or 6 pounds heavier than the boxer in or under the lightweight class.

875—173.3(90A) Age restrictions. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—173.4(90A) Injury. If a contestant claims to be injured during the bout, the referee shall stop the bout and request the attending physician to make an examination. If the physician decides that the contestant has been injured as the result of a foul, the physician shall advise the referee of the injury. If the physician is of the opinion that the injured contestant may be able to continue, the physician shall order a five-minute intermission, after which the physician shall make another examination and again advise the referee of the injured contestant's condition. It shall be the duty of the promoter to have an approved physician in attendance during the entire duration of all bouts.

875—173.5(90A) Knockdown. If a contestant falls due to fatigue or is knocked down by the opponent, the contestant shall be allowed ten seconds in which to rise unassisted. When a contestant falls, the opponent shall go to the farthest neutral corner and remain there during the ten-second count. The referee shall stop counting should the opponent fail to go to a neutral corner.

875—173.6(90A) Limitation on number of bouts. Any boxing contestant who has agreed to take part in a bout of five rounds or more shall not be permitted to participate in any other bout in Iowa or elsewhere five days prior to the date of the bout unless given permission by the commissioner.

875—173.7(90A) Contestants' arrival. All main event contestants shall be in the city or locale at least 24 hours before the scheduled time of the bout or contest. The promoter shall advise the commissioner of the arrival time. Any exception to this rule shall be approved by the commissioner.

875—173.8(90A) Persons allowed in the ring. No person other than the contestants and the referee shall enter the ring during the bout, excepting the seconds between the rounds or the attending physician if asked by the referee to examine an injury to a contestant.

875—173.9(90A) Protection of hands. Only one roll of cotton gauze surgical bandage, not to exceed 2 inches in width and 10 yards in length, shall be used for the protection of each hand. Only one winding of surgeons' adhesive tape not more than 1½ inches in width may be placed directly on the hand to protect that part of the hand near the wrist. Said tape may cross the back of the hand twice, but shall not extend within 1 inch of the knuckles when the hand is clenched to make a fist.

875—173.10(90A) Scoring. Twenty points shall be the maximum number to be scored in any round. The contestant winning the round shall receive ten points and the opponent proportionately less. If the round is even, each contestant shall receive ten points.

875—173.11(90A) Gloves. The gloves must not be twisted or manipulated in any way by the contestants or their handlers. If a glove breaks or a string becomes untied during the bout, the referee will instruct the timekeeper to take time out while the glove is being adjusted.

875—173.12(90A) Proper attire. Contestants must wear proper athletic attire. Athletic attire of opposing contestants shall be of contrasting colors. Male contestants shall wear a foul proof protective cup. Female contestants shall wear foul proof pelvic area protection and breast protection.

875—173.13(90A) Use of substances. Excessive use of cocoa butter, petroleum jelly, grease, ointments or strong-smelling liniment by a contestant during the progress of a bout will not be permitted.

875—173.14(90A) "Down." A boxer will be deemed down when:

1. Any part of the boxer's body other than the boxer's feet is on the ring floor or while rising from a down position.
2. The boxer is hanging helplessly over the ring ropes, but then is not officially down until so pronounced by the referee, who may count the boxer out either on the ropes or on the floor.

875—173.15(90A) Foul. The following activities will be deemed a foul:

1. Hitting below the belt or after the bell has terminated the round.
2. Hitting an opponent who is down or who is getting up after being down.
3. Holding an opponent or deliberately maintaining a clinch.
4. Holding an opponent with one hand and hitting with the other hand.
5. Butting with head or shoulders or using the knee.
6. Hitting with inside or butt of the hand, the wrist or the elbow and all backhand blows.
7. Hitting or "flicking" with the open glove or thumbing.
8. Wrestling or roughing at the ropes.
9. Purposely going down without being hit.
10. Striking deliberately at that part of the body over the kidneys.
11. Use of the pivot blow or rabbit punch.
12. Use of abusive or profane language.
13. Failure to obey the referee, or any physical actions which may injure a contestant, except by fair sportsmanlike boxing.

875—173.16(90A) Penalties. The referee will penalize a contestant guilty of committing any foul by deducting points from the contestant's score for the round in which the foul is committed. If, in the referee's judgment, the foul is of a serious nature or intentionally inflicted, the referee may award the bout to the contestant who was fouled.

875—173.17(90A) Weight classes. Scale of weights:

	[Pounds]
Flyweight	112
Bantamweight	118
Featherweight	126
Lightweight	135
Welterweight	147
Middleweight	160
Light heavyweight	175
Heavyweight	Over 175

875—173.18(90A) Attendance of commissioner. At each boxing card, the commissioner or the commissioner's designee shall be in attendance.

875—173.19(90A) Weighing of contestants. Contestants shall be weighed and examined on the day of the scheduled match by the attending ring physician, at a time and place to be determined by the commissioner. Preliminary boxers may be allowed to weigh in and be examined not later than one hour before the scheduled time of the first match on the card. All weigh-ins will be conducted with the boxer stripped. Accurate scales shall be furnished by the promoter.

875—173.20(90A) Officials. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—173.21(90A) General requirements. The commissioner shall not approve bout permits for bouts on Christmas Day. "Battles royal" or bouts in which more than two boxing contestants are to appear in the ring at the same time shall not be approved. In programs where both amateur and professional contestants appear on the same card, there shall be no more than four amateur bouts of three rounds each. The amateur contests shall be under the complete control and supervision of the United States of America Amateur Boxing Federation authority. On each card containing amateur and professional contests, there shall be at least an equal or greater number of bouts of professional boxing. The amateur section of the card shall be held first with at least a 15-minute intermission between the amateur and professional events.

875—173.22(90A) Public safety. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—173.23(90A) Excessive coaching. Excessive coaching and other detracting activities by seconds, managers or trainers while the bouts are in progress are prohibited. Offenders will be warned and if the violation continues, the offending contestant may be charged with a foul and a loss of points.

875—173.24(90A) Abusive language. The use of foul or abusive language or mannerisms by any person associated with any bout shall not be tolerated.

875—173.25(90A) Locker rooms. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—173.26(90A) Contracts. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—173.27(90A) Ring requirements. The ring shall not be less than 16 nor more than 22 feet square within the ropes and must be elevated 3½ feet above the floor. Suitable steps for the use of contestants shall be provided.

875—173.28(90A) Ring posts. The ring posts shall be constructed of metal not more than 4 inches in diameter. The posts shall extend from the floor of the building to the height of 58 inches above the ring floor and shall be fastened securely to the floor or to the other posts.

875—173.29(90A) Ropes. The ropes shall be a minimum of three in number, extending in a triple line 18 inches, 35 inches and 52 inches from the floor of the ring; at least 1 inch in diameter; and wrapped in soft materials. The ropes may not be closer to the ring posts than 18 inches. If four ropes are used, they will be proportionately spaced.

875—173.30(90A) Ring floor. The ring floor shall extend beyond the lower rope for a distance of not less than 18 inches. The entire floor shall be padded to the thickness of at least 1 inch with felt, corrugated paper, matting or other soft materials to be approved by the commissioner. A canvas covering stretched tightly and laced to the ring platform shall cover the padding.

875—173.31(90A) Bell. A suitable bell or gong shall be provided and used.

875—173.32(90A) Gloves. Gloves shall not weigh less than 8 ounces for professional bouts and must be new for all main events and bouts of ten rounds or greater. All gloves shall be furnished by the promoter.

875—173.33(90A) Referee's duties. The referee is charged with the enforcement of all rules of the commissioner which apply to the performance and conduct of contestants and their seconds while in the ring.

875—173.34(90A) Chief second. Before starting each bout the referee shall ascertain the name of the chief second in each corner and will hold the chief second responsible for all conduct in the corner.

875—173.35(90A) Naming referee. The promoters shall be permitted to name a referee subject to approval by the commissioner.

875—173.36(90A) Reasons for stopping bout. The referee shall stop a bout when the referee deems it advisable because of the physical condition of one or both of the contestants, when one of the contestants is clearly outclassed by an opponent, when the referee decides that the best effort is not being made by a contestant, or for any other reason the referee deems sufficient.

875—173.37(90A) Forfeit of purse. The referee has the power to declare forfeited all or any part of a contestant's purse whenever in the referee's judgment the contestant is not performing in good faith.

875—173.38(90A) Inspection for foreign substances. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—173.39(90A) Shaking hands. The contestants in all boxing bouts shall be instructed by the referee to shake hands after the referee's final instructions and not to do so again until the start of the last scheduled round.

875—173.40(90A) Assessing fouls. The referee shall instruct the judges to mark their scorecards accordingly when the referee has assessed a foul and deduct a point from one of the contestants.

875—173.41(90A) Delaying prohibited. The referee shall ensure that a bout move to its proper completion. Except in cases of damaging fouls, a bout shall not be delayed. Delaying and avoiding tactics shall be avoided and the contestant who employs such tactics shall be penalized in the scoring.

875—173.42(90A) Count. When a fallen contestant rises and falls again, without being hit again, the referee shall continue the original count rather than starting a new count.

875—173.43(90A) Intentional foul. In assessing fouls, the referee shall weigh the cause as well as the act. When a foul is unintentionally inflicted but intentionally received, it should be applied to the recipient who deliberately receives the foul.

875—173.44(90A) Use of the ropes. The referee shall penalize a contestant who uses the ropes to gain advantage. The penalty shall be the deduction of points, and a warning to the contestant against continued use of the ropes to gain advantage.

875—173.45(90A) Attending ring physician. When a boxer has been injured seriously, knocked out or technically knocked out, the referee shall immediately summon the attending ring physician to aid the stricken boxer. Managers, handlers and seconds shall not attend to the stricken boxer, except at the request of the physician.

875—173.46(90A) Technical knockout. Except for championship fights of national recognition, the referee shall stop the fight after a fighter is knocked down three times in one round and declare the opponent a winner on a technical knockout (TKO).

875—173.47(90A) Timekeeper. The timekeeper shall provide a stopwatch and shall maintain an accurate time of all bouts. The timekeeper shall keep an exact record of time taken out at the request

of a referee for an examination of a contestant by the physician, replacing a glove or adjusting any equipment during a round. The timekeeper shall provide a whistle and shall sound the whistle ten seconds before the start of each round of boxing bouts. The timekeeper shall be impartial and shall not signal interested parties at any time during a bout.

875—173.48(90A) Seconds. Unless special permission is given by the commissioner, there shall not be more than two seconds. Before the start of the bout, each corner shall notify the referee the name of the chief second.

875—173.49(90A) Requirements for seconds. Seconds shall not enter the ring until the timekeeper indicates the termination of the round and they must leave at the sound of the timekeeper's whistle before the beginning of each round. If the chief second or anyone for whom the promoter is responsible, such as a manager, enters the ring before the bell ending the round has sounded, the fight shall be terminated and the decision shall be awarded to the opponent. Seconds shall not smoke in the ring or corners and shall not wear a hat or cap while working in the corner.

875—173.50(90A) Use of water. Seconds shall not throw or splash water upon a contestant. A wet sponge may be used between rounds to refresh the contestant. Excess water on the floor of the ring shall be wiped up immediately by the seconds. Water discharged from the mouth of a contestant shall be caught in a bucket.

875—173.51(90A) Stopping the fight. The throwing of a towel into the ring to indicate the defeat of a contestant shall not be recognized by the referee. The fight will be stopped when the second or manager appears on the ring apron.

875—173.52(90A) Removing objects from ring. Before leaving the ring at the start of each round the seconds shall remove all obstructions, buckets, stools, bottles, towels and robes from the ring floor and ropes.

875—173.53(90A) Decision. Each judge shall reach a decision without conferring in any manner with any other official or person. Each judge shall make out a scorecard to the best of the judge's ability and in accordance with the provisions of the rules governing boxing. At the end of the bout the decision shall be written on the scorecard and the card shall be given to the commissioner or designee for verification who shall then hand the cards to the referee who will then announce the decision. The winner shall be determined on the majority vote of the three judges and each judge shall select a choice based on the highest number of points.

875—173.54(90A) Blood-borne disease testing. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—173.55(90A) Boxer registration. The commissioner participates in the Association of Boxing Commissions (ABC) national boxer registration system which allows authorities from different states to share information concerning boxers. The issuance of a registration card to a boxer does not guarantee the right to participate in a match.

173.55(1) *Application.* A boxer shall apply for registration in the state where the boxer resides, unless the state where the boxer resides does not participate in the ABC registration system. A person applying for a new or renewal boxer registration shall complete, sign, and submit to the division the ABC Boxer's Federal Identification Card Application. With the application, the applicant shall submit a $25 fee; two 1″ × 1.5″ color photographs of the applicant's head; and a copy of a photo identification issued to the applicant by a governmental entity and containing the applicant's photograph and social security number or similar foreign identification number. The applicant must be recognizable in the photographs.

173.55(2) *Expiration.* The registration shall expire two years from the date of issuance.

173.55(3) *Changes.* The boxer shall notify the division at the time any of the information on the form changes.

173.55(4) *Denials.* The labor commissioner may refuse to issue or renew a boxer registration for failure to complete an application package properly.

[**ARC 8916B**, IAB 6/30/10, effective 8/4/10]

These rules are intended to implement Iowa Code chapter 90A.

[Filed 2/10/71]

[Filed emergency 6/1/84—published 6/20/84, effective 6/1/84]

[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]

[Filed emergency 4/29/91—published 5/29/91, effective 5/1/91]

[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

[Filed 1/12/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]

[Filed 5/16/07, Notice 4/11/07—published 6/6/07, effective 7/11/07]

[Filed ARC 8916B (Notice ARC 8752B, IAB 5/5/10), IAB 6/30/10, effective 8/4/10]

[Filed ARC 1240C (Notice ARC 1107C, IAB 10/16/13), IAB 12/11/13, effective 1/15/14]

NOTE: For first two lines of history, see Athletics Commissioner[110] Ch 2.

CHAPTER 174
ELIMINATION TOURNAMENTS

[Prior to 9/24/86, Athletics Commissioner[110] Ch 3]
[Prior to 10/21/98, see 347—Ch 98]
[Prior to 8/16/06, see 875—Ch 98]

875—174.1(90A) Purpose and scope. These rules apply to elimination tournaments, which are boxing matches where contestants box one another, two at a time, with one contestant eliminated from the tournament. The elimination continues with winners from the various bouts competing until only one contestant remains undefeated in the weight division. Elimination tournaments are governed by the rules in 875—Chapter 173 and this chapter. Any conflicts between 875—Chapter 173 and this chapter shall be resolved in favor of this chapter.

875—174.2(90A) Bouts, rounds and rest periods. Each bout shall consist of no more than three rounds. Each round shall be two minutes in length. A rest period of 90 seconds shall be provided between rounds. No contestant shall be permitted to compete in more than three bouts in any 20-hour period.

In national elimination tournaments, when the ability and conditioning of the contestants are assured, the athletics commissioner may authorize two contestants to participate in a fourth bout which determines the championship, provided all bouts are comprised of three 90-second rounds. Under no circumstances will any participant be permitted to compete more minutes in any one 20-hour period than is authorized under the rule allowing three bouts consisting of three two-minute rounds as set forth in this rule.

875—174.3(90A) Protective equipment.

174.3(1) *Hand protection.* Practice wraps (training handwraps) may be used in lieu of compliance with rule 875—173.9(90A). Gloves weighing 16 ounces shall be worn by both contestants if either contestant weighs 147 pounds or more. If both contestants weigh less than 147 pounds, both contestants shall wear gloves weighing at least 10 ounces.

174.3(2) *Body protection.* All male contestants shall wear a foul proof protective cup. All female contestants shall wear foul proof pelvic area protection and breast protection.

174.3(3) *Head protection.* The promoter shall provide and the contestants shall wear protective headgear. A contestant will not be required to wear head protection if the contestant signs a waiver that the contestant has voluntarily decided not to wear the protective headgear.

174.3(4) *Mouth protection.* A mouthpiece shall be worn by all contestants throughout the bout. If the mouthpiece is knocked from a contestant's mouth, it shall be replaced with no penalty. Any contestant who deliberately spits out a mouthpiece shall be cautioned the first time, the referee shall deduct one point from each judge's scorecard the second time and the contestant will be disqualified the third time. Before being replaced, the mouthpiece shall be washed.

174.3(5) *Hair protection.* Where necessary, hair shall be secured in a manner that it will not interfere with the vision or safety of either contestant.

875—174.4(90A) Weight restrictions. Permission must be received from the commissioner before any contestant will be permitted to box an opponent with a weight differential greater than the following:

Contestants	Weight Differential
Under 135 pounds	6 pounds
135-160 pounds	12 pounds
160-190 pounds	18 pounds
Over 190 pounds	No restriction

875—174.5(90A) Down. In determining a technical knockout (TKO) under rule 875—173.46(90A), a down shall include a standing eight count where a contestant is still standing but is in a semiconscious state and cannot, in the opinion of the referee, continue the bout.

875—174.6(90A) Suspension. A contestant who suffers a knockout or where the referee stops a fight on a technical knockout (TKO) shall not be permitted to box in the state for a period of 30 days. Before being permitted to fight again, the contestant shall be examined by a physician approved by the commissioner.

875—174.7(90A) Training requirements. Each contestant shall have been involved in conditioning for at least 30 days prior to competing in any elimination tournament. Conditioning means a combination of roadwork or jogging and usual training center conditioning exercises. The promoter shall obtain from each contestant prior to the physical examination a written declaration from the contestant, witnessed by at least one other person, that the contestant has met these training requirements.

875—174.8(90A) Judges. Three judges, each located on different sides of the ring, shall separately score bouts. The referee shall not be permitted to act as a judge in scoring a bout.

875—174.9(90A) Public safety. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—174.10(90A) Impartiality of timekeeper. The use of lights on each ring post to indicate the final seconds of a round shall not be considered as signals to interested parties under rule 875—173.47(90A). Corner lights may be used only if consistently activated throughout the elimination tournament and all contestants and officials are informed prior to the start of the tournament about the information conveyed by the round lights.

875—174.11(90A) Ringside. No person may sit or stand at ringside unless authorized by the promoter or commissioner.

875—174.12(90A) Physical examination—female contestants. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—174.13(90A) Contestants of opposite sex prohibited. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

These rules are intended to implement Iowa Code sections 90A.2 and 90A.5.

[Filed emergency 5/4/81—published 5/27/81, effective 5/4/81]
[Filed 1/8/82, Notice 11/25/81—published 2/3/82, effective 3/10/82]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed ARC 1240C (Notice ARC 1107C, IAB 10/16/13), IAB 12/11/13, effective 1/15/14]

NOTE: For first two lines of history, see Athletics Commissioner[110] Ch 3.

CHAPTER 175
AMATEUR BOXING

[Prior to 9/24/86, Athletics Commissioner[110] Ch 4]
[Prior to 10/21/98, see 347—Ch 99]
[Prior to 8/16/06, see 875—Ch 99]

875—175.1(90A) Purpose. This chapter applies to amateur boxing contests. Until the promoter ensures compliance with this chapter, no contest shall be considered as a sanctioned or permitted event of the Iowa amateur boxing federation.

875—175.2(90A) Application. All promoters of organized amateur boxing contests shall complete an application form obtained from the United States of America Amateur Boxing Federation, Iowa amateur boxing federation. The application shall include an attached signed statement that the promoter prohibits contestants who are 30 years of age or over from participating in boxing tournaments where other contestants are under 30 years of age, and prohibits those over 30 years of age from participating in individual bouts unless both contestants are over 30 years of age. The Iowa amateur boxing federation shall provide the labor commissioner with the completed application and promoter statement within seven days after the date of the contest.

875—175.3(90A) Verification. Verification of the contestant's age shall be made by the promoter at the time of the prefight physical examination. Proof of age shall be through a birth certificate or equivalent document provided by the contestant.

875—175.4(90A) Forms. Forms to comply with this chapter will be provided by the labor commissioner.

These rules are intended to implement Iowa Code chapter 90A.

[Filed 1/24/85, Notice 11/21/84—published 2/13/85, effective 3/20/85]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

CHAPTER 176
PROFESSIONAL KICKBOXING

[Prior to 10/21/98, see 347—Ch 100]
[Prior to 8/16/06, see 875—Ch 100]

875—176.1(90A) Scope and purpose. This chapter applies to professional kickboxing contests. The labor commissioner finds that professional kickboxing is a contest within the scope of Iowa Code chapter 90A. Until a promoter ensures compliance with this chapter, a professional kickboxing contest shall not be licensed by the labor commissioner.

The labor commissioner shall have final decision-making authority concerning the enforcement, implementation, and interpretation of the rules in this chapter, including those adopted by reference.

This chapter does not apply to any professional boxing, professional wrestling or amateur kickboxing events.

875—176.2(90A) WKA rules adopted by reference. The labor commissioner adopts by reference the kickboxing rules and regulations of the World Karate Association used for all World Karate Association professional kickboxing events. These rules and regulations are published by the World Karate Association, "The Official Rules of the World Karate Association," rules 1-48, January 1987 edition.

875—176.3(90A) Professional boxing rules adopted by reference. The following rules from 875—Chapter 173, Professional Boxing, are adopted by reference as kickboxing rules:

1. 875—173.3(90A) (Age restrictions);
2. 875—173.6(90A) (Number of bouts);
3. 875—173.7(90A) (Contestant's arrival);
4. 875—173.18(90A) (Attendance of commissioner);
5. 875—173.22(90A) (Public safety);
6. 875—173.25(90A) (Locker rooms); and
7. 875—173.26(90A) (Contracts).

875—176.4(90A) Additional provisions.

176.4(1) Officials. The designation of officials, referees, physicians, timekeepers, judges, kick counters, scorekeepers, contestants, seconds, and managers is subject to the approval of the commissioner or designee.

176.4(2) "Battles royal" or bouts in which more than two kickboxing contestants are to appear in the ring at the same time shall not be approved.

These rules are intended to implement Iowa Code chapter 90A.

[Filed emergency 9/11/87—published 10/7/87, effective 9/11/87]
[Filed 12/11/87, Notice 10/7/87—published 12/30/87, effective 2/3/88]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]

CHAPTER 177
MIXED MARTIAL ARTS

[Prior to 10/21/98, see 347—Ch 101]
[Prior to 8/16/06, see 875—Ch 101]

875—177.1(90A) Definitions. The definitions contained in Iowa Code chapter 90A as amended by 2010 Iowa Acts, Senate File 2286, and the definitions in this rule shall apply to this chapter.

"Complimentary tickets," as used in Iowa Code section 90A.9, means tickets that are sold for less than 50 percent of the minimum price available to the general public and tickets for which no fee is charged.

"Contestant" means a person who fights or is scheduled to fight in a match.

"Event" means a program or card of one or more matches covered by Iowa Code chapter 90A.

"Match" means a mixed martial arts match.

"Mixed martial arts" means a style of athletic contest that includes a combination of combative skills from the sports of boxing, wrestling, kickboxing and judo.

"MMA" means mixed martial arts.

[**ARC 8916B**, IAB 6/30/10, effective 8/4/10; **ARC 9335B**, IAB 1/12/11, effective 2/16/11]

875—177.2(90A) Responsibilities of promoter. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

875—177.3(90A) Equipment specifications.

177.3(1) *Ring requirements.*

a. *Size.* The cage shall not be less than 16 nor more than 36 feet square.

b. *Enclosure.* The ring shall be equipped with an enclosure to limit persons from being tossed from the ring. The enclosure shall be at least 6 feet high. The enclosure shall consist of supports and enclosing material. The supports shall be constructed of rigid material not more than 4 inches in diameter. The supports shall be fastened securely to the floor or to the other supports. The supports shall be protected by padding to avoid injury to any contestants striking the supports. The enclosing material shall have openings not to exceed 4 inches in any direction. The enclosing material shall not be rigid and shall deflect at least ½ inch when ten pounds of pressure are exerted upon any point. All sharp objects or protrusions shall be protected with padding.

c. *Height.* The ring shall not be elevated more than 3½ feet above the floor. Suitable steps for the use of contestants shall be provided.

d. *Ring floor.* The ring floor shall be padded to the thickness of at least 1 inch with insulite or other soft materials to be approved by the commissioner. A canvas covering stretched tightly and laced to the ring platform shall cover the padding.

e. *Ring approval.* The promoter shall make the ring and ring enclosure system available in the state of Iowa for inspection by the commissioner at least ten days prior to any event. The specifications in this rule are general, and so actual inspection will be necessary to verify adequate contestant safety prior to the event. If the commissioner has previously inspected the ring used by the promoter, the commissioner may waive the ten-day advance inspection.

177.3(2) *Bell.* A suitable bell or gong shall be provided and used.

177.3(3) *Time keeping.* The timekeeper shall be provided with a stopwatch and whistle.

[**ARC 8916B**, IAB 6/30/10, effective 8/4/10]

875—177.4(90A) Event.

177.4(1) *Officials.* Officials shall consist of three judges, two referees, the physician, and the timekeeper.

177.4(2) *Referee.* The referee is charged with the enforcement of all rules of the commissioner which apply to the performance and conduct of contestants and their seconds while in the ring. The referee shall wear latex gloves at all times while in the ring.

177.4(3) *Timekeeper.* The timekeeper shall keep an exact record of time taken out at the request of a referee for an examination of a contestant by the physician, replacing a glove or adjusting any equipment during a round. The timekeeper shall notify contestants at the beginning and end of each round. The timekeeper shall be impartial and shall not signal interested parties at any time during a match.

177.4(4) *Participants.* The contestants, seconds and managers are subject to approval by the commissioner.

177.4(5) *Weighing of contestants.* Rescinded IAB 6/30/10, effective 8/4/10.

177.4(6) *Scoring.* Three judges shall score each match by evaluating striking, grappling, control of the cage, aggressiveness, and defense. The significance and number of legal strikes shall receive the greatest weight. The number of legal takedowns and reversals shall receive the second greatest weight. Control of the cage shall receive the third greatest weight. Aggression shall receive the fourth greatest weight. Defense shall receive the least weight. The winner of a round shall always receive a score of 10. The score for each round shall be one of the following:

a. If the contestants were evenly matched and neither dominated the round, the score shall be 10-10.

b. If a contestant won a round by a close margin, the score shall be 10-9.

c. If a contestant overwhelmingly dominated a round, the score shall be 10-8.

d. If a contestant totally dominated a round, the score shall be 10-7.

177.4(7) *Length of match.* Each match shall consist of no more than three rounds with no more than five minutes per round. However, the commissioner may authorize experienced contestants to compete in up to five rounds of up to five minutes each. There shall be a one-minute rest period between rounds. An overtime round shall not be allowed.

177.4(8) *Persons allowed in the cage.* No person other than the two contestants and the referee shall enter the cage during the match. However, the physician may enter the cage to examine a contestant upon the request of the referee.

177.4(9) *Seconds.*

a. Unless special permission is granted by the commissioner, there shall be no more than two seconds. Before the start of the match, each corner shall notify the referee of the name of the chief second.

b. Seconds shall not enter the cage except as authorized by this paragraph. The chief second may enter the cage after the timekeeper indicates the termination of the round, and the chief second must leave before the beginning of a round.

c. Before leaving the ring at the start of the round, the seconds shall remove all obstructions, buckets, stools, bottles, towels and robes from the ring floor and ring enclosure.

d. Seconds shall not smoke in the ring or corners and shall not wear a hat or cap while working in the corner.

e. Seconds shall wear latex gloves at all times while attending any contestant.

f. Seconds shall not throw or splash water upon a contestant. Excess water on the floor of the cage shall be wiped up immediately. Water discharged from the mouth of a contestant shall be caught in a bucket.

177.4(10) *Decorum of officials and participants.*

a. Except as allowed in this subrule, a promoter, official, or participant shall not:

(1) Intentionally or recklessly strike or injure a person;

(2) Speak or act in a threatening manner toward a person; or

(3) Damage, destroy, or attempt to damage or destroy property.

b. The commissioner may immediately suspend the promoter's license if the promoter does not comply with paragraph 177.4(10)*"a"* or if the promoter does not take appropriate action to curtail activities in violation of paragraph 177.4(10)*"a"* by an official or a participant.

c. The commissioner may immediately suspend the authorization to participate in the event of an official or a participant who does not comply with paragraph 177.4(10)*"a."*

d. A contestant is exempt from 177.4(10)(a)(1) and (2) while interacting with the contestant's opponent during a round. However, if the round is stopped by the physician or referee for a time out, 177.4(10)(a)(1) and (2) shall apply to a contestant.
[**ARC 8916B**, IAB 6/30/10, effective 8/4/10]

875—177.5(90A) Contestants.

177.5(1) *Time between matches.* No contestant shall be permitted to compete if the contestant participated in a boxing, wrestling, kickboxing, judo, or mixed martial arts event within the previous five-day period.

177.5(2) *Age restrictions.* No contestant under the age of 18 years shall be permitted to participate in any event except by special permission of the commissioner.

177.5(3) *Proper attire.* Contestants must wear proper athletic attire. Athletic attire of opposing contestants shall be of contrasting colors.

177.5(4) *Body protection.* All male contestants shall wear a foulproof protective cup. All female contestants shall wear foulproof pelvic area protection and breast protection.

177.5(5) *Mouth protection.* Each contestant shall wear a mouthpiece throughout each match. If the mouthpiece is knocked from a contestant's mouth, it shall be washed and then replaced.

177.5(6) *Gloves.* Gloves shall be approved martial arts gloves. All gloves shall be approved by the commissioner.

177.5(7) *Hand protection.* Only one roll of cotton gauze surgical bandage, not to exceed 2 inches in width and 10 yards in length, shall be used for the protection of each hand. Only one winding of surgeons' adhesive tape, not more than 1½ inches in width, may be placed directly on the hand to protect that part of the hand near the wrist. The tape may cross the back of the hand twice, but shall not extend within 1 inch of the knuckles when the hand is clenched to make a fist. Practice wraps (training handwraps) may be used in lieu of gauze and tape.

177.5(8) *Hair protection.* Where necessary, hair shall be secured in a manner that it will not interfere with the vision or safety of either contestant.

177.5(9) *Use of substances.* Rescinded IAB 12/11/13, effective 1/15/14.

177.5(10) *Contestants' grooming.* Rescinded IAB 12/11/13, effective 1/15/14.

177.5(11) *Blood-borne disease testing.* Rescinded IAB 12/11/13, effective 1/15/14.

177.5(12) *Weighing contestants.*

a. The promoter shall arrange for each contestant to be weighed in Iowa during the 24-hour period prior to the event.

b. Accurate scales shall be furnished by the promoter.

c. An official who has been approved by the commissioner shall weigh each contestant and accurately record the contestant's name and weight and the date and time. The weight records shall be submitted to the commissioner on the date of the event.

d. All contestants scheduled for an event shall be weighed on the same date.

e. Contestants shall be weighed in the presence of their opponents and without shoes, clothes or equipment.

f. Unless both contestants weigh more than 200 pounds, there shall not be a weight difference of more than 20 pounds between opponents without the commissioner's consent.

g. No less than two weeks before the event, a promoter may request that a representative of the commissioner be present when contestants are weighed. The fee for this optional service shall be $200 plus reasonable and necessary travel expenses.

177.5(13) *Examination of contestants.* On the day of the event, at a time and place to be approved by the commissioner, the ringside physician shall conduct a rigorous physical examination to determine the contestant's fitness to participate in an MMA match. A contestant deemed not fit by the physician shall not participate in the event.
[**ARC 8916B**, IAB 6/30/10, effective 8/4/10; **ARC 1240C**, IAB 12/11/13, effective 1/15/14]

875—177.6(90A) Procedural rules.

177.6(1) *Inspection for foreign substances.* Rescinded IAB 12/11/13, effective 1/15/14.

177.6(2) *Prohibited materials in ring.* Contestants shall not take anything not permitted by these rules into the ring or pick up anything thrown into the ring and use the material or object in any way to gain an advantage over an opponent.

177.6(3) *Fouls.* As set forth in this subrule, the referee may penalize a contestant for fouls by disqualifying the contestant or by deducting points. The referee shall immediately determine if each foul is flagrant or accidental. "Flagrant" means the foul was intentional or reckless. "Accidental" means the foul was unintentional or incidental.

a. *Disqualification.* If the referee determines that the foul was flagrant and the contestant who was fouled is unable to continue due to an injury resulting from the foul, the contestant who committed the foul shall be disqualified.

b. *Deduction of points.* In determining the number of points to be deducted, the referee shall consider the nature and severity of the foul and its effect upon the opponent. As soon as practical after the foul, the referee shall notify the judges, contestants, and the commissioner of the number of points, if any, to be deducted from the score of the offender and whether the foul was flagrant or accidental. Points shall be deducted in the round in which the foul occurred.

c. *Continuation of match.* This paragraph governs how a match shall be continued if a foul that does not result in disqualification occurs.

(1) If a foul occurred but did not cause a serious injury, the referee may order the match to continue after a five-minute delay for recuperation. If subsequent fair blows aggravate the injury inflicted by a foul and the referee orders the contest stopped because of the injury, the outcome will be determined by scoring the completed rounds and the round during which the referee stopped the match.

(2) If an accidental foul results in a concussive impact to the head, if a contestant's chance of winning has been seriously jeopardized as a result of an accidental foul, or if a contestant is not able to continue the match due to an injury caused by an accidental foul, "no contest" will be declared or the winner will be determined based on points as set forth below.

1. "No contest" will be declared if:

- The foul occurs during the first two rounds of a match scheduled for three rounds or fewer.
- The foul occurs during the first three rounds of a match scheduled for four or five rounds.

2. The winner will be determined by scoring the completed rounds and the round during which the referee stopped the match if:

- The foul occurs during the third round of a match scheduled for three rounds.
- The foul occurs during the fourth or fifth round of a match scheduled for four or five rounds.

d. *Prohibited acts.* Each of the following actions is a foul:

(1) Butting with the head.
(2) Eye gouging of any kind.
(3) Biting.
(4) Hair pulling.
(5) Fishhooking.
(6) Groin attacks of any kind.
(7) Putting a finger into any orifice, cut, or laceration on an opponent.
(8) Small joint manipulation.
(9) Striking to the spine or behind the ears.
(10) Striking using the point of the elbow.
(11) Throat strikes of any kind, including, without limitation, grabbing the trachea.
(12) Clawing, pinching or twisting the flesh.
(13) Grabbing the clavicle.
(14) Kicking the head of a grounded opponent.
(15) Kneeing the head of a grounded opponent.
(16) Stomping a grounded opponent.
(17) Striking the kidney.
(18) Dropping or slamming an opponent on an opponent's head or neck.
(19) Throwing an opponent out of the cage or fenced area.

(20) Holding the shorts or gloves of an opponent.

(21) Spitting at an opponent.

(22) Engaging in any unsportsmanlike conduct that causes an injury to an opponent.

(23) Holding the ropes or the fence.

(24) Using abusive language in the cage or fenced area.

(25) Attacking an opponent during a break.

(26) Attacking an opponent who is under the care of the referee.

(27) Attacking an opponent after the bell has sounded the end of the round.

(28) Flagrantly disregarding the instructions of the referee.

(29) Timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury.

(30) Interference by a second.

(31) Throwing in the towel during competition.

(32) Threatening or intentionally striking or injuring any person other than the contestant's opponent.

177.6(4) *Mouth protection ejected.* If the mouth protection is knocked from a contestant's mouth, it shall be replaced with no penalty.

177.6(5) *Spitting mouth protection.* The referee shall caution a contestant who deliberately spits out a mouthpiece the first time and disqualify the contestant the second time.

177.6(6) *Gloves.* The gloves shall not be damaged or manipulated in any way by the contestants or their handlers. If a glove breaks or becomes undone during a match, the referee will instruct the timekeeper to take time out while the glove is being adjusted or replaced.

177.6(7) *Injury.* If a contestant claims to be injured or when a contestant has been injured seriously or knocked out, the referee shall immediately stop the fight and summon the attending ring physician to make an examination of the stricken fighter. If the physician decides that the contestant has been injured, the physician shall advise the referee of the severity of the injury. If the physician is of the opinion the injured contestant may be able to continue, the physician shall order a five-minute intermission, after which the physician shall make another examination and again advise the referee of the injured contestant's condition. Managers, handlers and seconds shall not attend to the stricken fighter, except at the request of the physician.

[**ARC 8916B**, IAB 6/30/10, effective 8/4/10; **ARC 1240C**, IAB 12/11/13, effective 1/15/14]

875—177.7(90A) Decision. A professional match concludes when:

177.7(1) A contestant submits.

177.7(2) The timekeeper indicates that time has expired in the final round of the match. The win will be awarded based on the judges' scores.

177.7(3) The referee stops the match.

177.7(4) The referee disqualifies a contestant for committing a foul pursuant to rule 875—177.6(90A).

177.7(5) A second or manager throws a towel into the cage to indicate the defeat of a contestant. The referee shall stop the match and award the win to the opponent.

177.7(6) A second or manager is in the cage when prohibited. The referee shall stop the match and award the win to the opponent.

[**ARC 8916B**, IAB 6/30/10, effective 8/4/10]

875—177.8(90A) Forfeit of purse. The commissioner, in consultation with the referee, has the power to declare forfeited all or any part of a contestant's purse whenever in the commissioner's judgment the contestant was not performing in good faith.

875—177.9(90A) Attendance of commissioner. Rescinded IAB 8/1/07, effective 9/5/07.

875—177.10(90A) Health and life insurance. Rescinded **ARC 1240C**, IAB 12/11/13, effective 1/15/14.

These rules are intended to implement Iowa Code sections 90A.2 and 90A.5.

[Filed Emergency 7/26/96—published 8/14/96, effective 8/14/96]
[Filed 7/26/06, Notice 5/10/06—published 8/16/06, effective 9/20/06]
[Filed 1/12/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]
[Filed 5/16/07, Notice 4/11/07—published 6/6/07, effective 7/11/07]
[Filed 7/13/07, Notice 6/6/07—published 8/1/07, effective 9/5/07]◊
[Filed ARC 8916B (Notice ARC 8752B, IAB 5/5/10), IAB 6/30/10, effective 8/4/10]
[Filed ARC 9335B (Notice ARC 9233B, IAB 11/17/10), IAB 1/12/11, effective 2/16/11]
[Filed ARC 1240C (Notice ARC 1107C, IAB 10/16/13), IAB 12/11/13, effective 1/15/14]

◊ Two or more ARCs

CHAPTERS 178 to 200
Reserved

CHAPTER 201
INSPECTIONS AND CERTIFICATES

[Prior to 1/14/98, see 347—Chs 41 to 49]

Rescinded IAB 8/16/06, effective 9/20/06

CHAPTERS 202 to 214
Reserved

MINIMUM WAGE

CHAPTER 215
MINIMUM WAGE SCOPE AND COVERAGE

[Prior to 10/21/98, see 347—Ch 215]

875—215.1(91D) Requirement to pay.

215.1(1) Every employer shall pay to each of the employer's employees performing work in this state wages of not less than the applicable minimum hourly wage set forth in Iowa Code section 91D.1 as amended by 2007 Iowa Acts, House File 1, unless otherwise noted in 875—Chapters 215 through 220.

215.1(2) Rescinded IAB 12/12/01, effective 1/16/02.

215.1(3) Rescinded IAB 11/23/94, effective 1/1/95.

875—215.2(91D) Initial employment wage rate.

215.2(1) The 90-calendar-day period set forth in Iowa Code section 91D.1(1)*"d"* as amended by 2007 Iowa Acts, House File 1, is counted from the employee's initial day of work.

215.2(2) If the state minimum initial employment wage rate changes during the 90-calendar-day period, the employer shall pay the new effective rate.

215.2(3) If, after less than 90 calendar days from the initial day of work, the employee's employment is terminated and the employee is rehired by the same employer within three years of the initial hiring, the initial employment wage rate in effect at rehiring may be paid until the 90-calendar-day employment period is reached. If, after 90 calendar days from the initial day of work, the employee's employment is terminated and the employee is rehired in less than three years from the last date of employment, the employee shall not be employed at the initial employment wage rate.

215.2(4) Rescinded IAB 8/29/07, effective 10/3/07.

875—215.3(91D) Definitions. As used in 875—Chapters 216 to 220:

215.3(1) *"Agriculture"* includes farming in all its branches and among other things includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 15(g) of the Agricultural Marketing Act, as amended); the raising of livestock, bees, furbearing animals, or poultry; and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

215.3(2) *"American vessel"* includes any vessel which is documented or numbered under the laws of the United States.

215.3(3) *"Commissioner"* means the labor commissioner or the commissioner's designee.

215.3(4) *"Commerce"* means trade, commerce, transportation, transmission, or communication among the several states or between any state and any place outside thereof.

215.3(5) *"Elementary school"* means a day or residential school which provides elementary education, as determined under state law.

215.3(6) *"Employ"* includes to suffer or permit to work.

215.3(7) *"Employee"* means any individual employed by an employer. In the case of an individual employed by a public agency, the term means any individual employed by the state, political subdivision of the state, or an interstate governmental agency, other than the individual:

a. Who is not subject to the civil service laws of the state, political subdivision, or agency which employs the individual; and

b. Who

(1) Holds a public elective office of that state, political subdivision, or agency,

(2) Is selected by the holder of the office to be a member of the holder's personal staff,

(3) Is appointed by the officeholder to serve on a policy-making level,

(4) Is an immediate adviser to the officeholder with respect to the constitutional or legal powers of the office, or

(5) Is an employee in the legislative branch or legislative body of that state, political subdivision, or agency and is not employed by the legislative library of the state, political subdivision, or agency.

215.3(8) *"Employee"* does not mean:

a. For purposes of the definition of "Person-day," any individual employed by an employer engaged in agriculture if the individual is the parent, spouse, child, or other member of the employer's immediate family.

b. Any individual who volunteers to perform services for a public agency which is the state, a political subdivision of the state, or an interstate government agency, if:

(1) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(2) The services are not the same type of services which the individual is employed to perform for the public agency.

However, an employee of a public agency which is the state, political subdivision of the state, or an interstate governmental agency may volunteer to perform services for any other state, political subdivision, or interstate governmental agency, including a state, political subdivision or agency with which the employing state, political subdivision, or agency has a mutual aid agreement.

215.3(9) *"Employer"* includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of the labor organization.

215.3(10) *"Enterprise"* means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements. Enterprise shall not include the related activities performed for the enterprise by an independent contractor, provided that, within the meaning of this definition, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement:

a. That it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser;

b. That it will join with other establishments in the same industry for the purpose of collective purchasing; or

c. That it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. For purposes of this definition, the following activities performed by any person or persons shall be deemed to be those activities performed for a business purpose:

(1) In connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or deficient who reside on the premises of the institution; a school for mentally or physically handicapped or gifted children; a day-care, preschool, elementary or secondary school; or an institution of higher education (regardless of whether the hospital, institution, or school is public or private or operated for profit or not for profit);

(2) In connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of the railway or carrier are subject to regulation by a state or local agency (regardless of whether the railway or carrier is public or private or operated for profit or not for profit); or

(3) In connection with the activities of a public agency.

215.3(11) *"Enterprise engaged in commerce or in the production of goods for commerce"* means an enterprise which has employees engaged in commerce or in the production of goods for commerce,

or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which:

a. Is an enterprise, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in 215.3(11)*"b,"* whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) is not less than $250,000;

b. Is an enterprise whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) is not less than $300,000;

c. Is, without regard to gross volume of sales or business done, engaged in laundering, cleaning, or repairing clothing or fabrics;

d. Is, without regard to gross volume of sales or business done, engaged in the business of construction or reconstruction, or both;

e. Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or deficient who reside on the premises of the institution; a school for mentally or physically handicapped or gifted children; a day-care, preschool, elementary or secondary school; or an institution of higher education (regardless of whether the hospital, institution, or school is public or private or operated for profit or not for profit); or

f. Is an activity of a public agency.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of the owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of an enterprise, and the sales of the establishments shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of 215.3(11). The employees of an enterprise which is a public agency shall for purpose of this definition be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

215.3(12) *"Goods"* means goods (including ships and marine equipment), wares, products, commodities, merchandise or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

215.3(13) *"Hours worked."* In determining, for the purpose of the minimum wage, the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective bargaining agreement applicable to the particular employee. In determining the total hours worked, the employer must include all time the employee is required to be on the premises or on duty (and not completely relieved of all job duties during a meal or sleep period) and all the time the employee is suffered or permitted to work.

215.3(14) *"Industry"* means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

215.3(15) *"Person"* means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

215.3(16) *"Person-day"* means any day during which an employee performs any agricultural labor for not less than one hour.

215.3(17) *"Produced"* means produced, manufactured, mined, handled, or in any other manner worked on in any state; and an employee shall be deemed to have been engaged in the production of goods if the employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on the goods, or in any closely related process or occupation directly essential to the production thereof, in any state.

215.3(18) *"Public agency"* means the government of the state of Iowa, its various departments and agencies, and any political subdivision of the state.

215.3(19) *"Resale"* shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance, provided that the sale is recognized as a bona fide retail sale in the industry.

215.3(20) *"Sale"* or *"sell"* includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

215.3(21) *"Secondary school"* means a day or residential school which provides secondary education, as determined under state law.

215.3(22) *"Tipped employee"* means any employee engaged in an occupation in which the employee customarily received more than $30 a month in tips.

215.3(23) *"Wage"* paid to any employee includes the reasonable cost, as determined by the labor commissioner, to the employer of furnishing the employee with board, lodging, or other facilities, if the board, lodging, or other facilities are customarily furnished by the employer to the employees, provided that the cost of board, lodging or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee, provided further, that the commissioner is authorized to determine the fair value of the board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. The evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid the employee by the employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 40 percent of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless:

a. The employee has been informed by the employer of the provisions of this definition, and

b. All tips received by the employee have been retained by the employee, except that this definition shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

SOURCE: 29 U.S.C. 203.

875—215.4(91D) Exceptions. The rules contained in 875—Chapters 215 to 220 shall not apply with respect to:

215.4(1) Any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesperson (except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in employee's workweek which the employee devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 percent of the employee's hours worked in the workweek are devoted to the activities).

215.4(2) Any employee employed by a retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described and defined in 215.3(11)*"e"*) if more than 50 percent of the establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located, and the establishment is not in an enterprise described and defined in 215.3(11). A "retail or service establishment" shall mean an establishment 75 percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

215.4(3) Any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or nonprofit education conference center, if

a. It does not operate for more than seven months in any calendar year, or

b. During the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 percent of its average receipts for the other six months of the year, except that the exemption provided does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture.

215.4(4) Any employee employed by an establishment which qualifies as an exempt retail establishment under 215.4(2) and is recognized as a retail establishment in the particular industry notwithstanding that the establishment makes or processes at the retail establishment the goods that it sells, provided that more than 85 percent of the establishment's annual dollar volume of sales of goods so made or processed is made within the state in which the establishment is located.

215.4(5) Any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any employee.

215.4(6) Any employee employed in agriculture:

a. If the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 person-days of agricultural labor;

b. If the employee is the parent, spouse, child, or other member of the employer's immediate family;

c. If the employee:

1. Is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,

2. Commutes daily from the employee's permanent residence to the farm on which the employee is employed, and

3. Has been employed in agriculture less than 13 weeks during the preceding calendar year;

d. If the employee (other than an employee described in 215.4(6)*"c"*):

1. Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,

2. Is employed on the same farm as the employee's parent or person standing in the place of the employee's parent, and

3. Is paid at the same piece rate as employees over age 16 are paid on the same farm; or

e. If the employee is principally engaged in the range production of livestock.

215.4(7) Any employee to the extent that the employee is exempted by regulations, order, or certificate of the Secretary of Labor issued under the federal Fair Labor Standards Act, 29 U.S.C. 214.

215.4(8) Any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than 4,000, having the major part of its circulation within the county where published or counties contiguous thereto.

215.4(9) Reserved.

215.4(10) Any switchboard operator employed by an independently owned public telephone company which has not more than 750 stations.

215.4(11) Reserved.

215.4(12) Any employee employed as a stevedore on a vessel other than an American vessel.

215.4(13) Reserved.

215.4(14) Any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.

215.4(15) Any enterprise whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) falls below the applicable amount so stated in 215.3(11) which initially required compliance. Future compliance shall be determined following each succeeding quarter with the gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) from the most recent four quarters being totaled to determine an annual gross. The gross amount initially requiring compliance shall continue in effect.

SOURCE: 29 U.S.C. 213.

875—215.5(91D) Interpretative guidelines. The rules contained in 875—Chapters 215 to 220 are based on the federal rules indicated at the end of each rule. The federal rules contained illustrative examples of the application of the rule. The examples are not adopted, but the commissioner will be guided in enforcement by the examples provided in the rules. The Secretary of Labor has adopted statements of general policy and interpretations not directly related to regulations at 29 CFR Parts 776, 779, 780, and 785. The commissioner will follow these statements and interpretations in the application and enforcement of Iowa Code chapter 91D.

These rules are intended to implement Iowa Code chapter 91D.

[Filed emergency 11/8/89 after Notice 9/6/89—published 11/29/89, effective 1/1/90]
[Filed 11/2/94, Notice 6/22/94—published 11/23/94, effective 1/1/95]
[Filed 11/20/01, Notice 6/13/01—published 12/12/01, effective 1/16/02]
[Filed emergency 4/16/07—published 5/9/07, effective 4/16/07]
[Filed 7/31/07, Notice 5/23/07—published 8/29/07, effective 10/3/07]

CHAPTER 216
RECORDS TO BE KEPT BY EMPLOYERS

[Prior to 10/21/98, see 347—Ch 216]

875—216.1(91D) Form of records—scope of rules.

216.1(1) *Form of records.* No particular order or form of records is prescribed by the rules in this chapter. However, every employer subject to any provisions of Iowa Code chapter 91D is required to maintain records containing the information and data required by the specific rules of this chapter. The records may be maintained and preserved on microfilm or other basic source document of an automatic word or data processing memory provided that adequate projection or viewing equipment is available, that the reproductions are clear and identifiable by date or pay period, and that extensions or transcriptions of the information required by this chapter are made available upon request.

216.1(2) *Scope of rules.*

a. Rules 216.2(91D) to 216.9(91D) contain the requirements generally applicable to all employers employing covered employees, including the requirements relating to the posting of notices, the preservation and location of records, and the record-keeping requirements for employers of covered employees. In addition, rule 216.3(91D) contains the requirements relating to executive, administrative, and professional employees (including academic administrative personnel or teachers in elementary or secondary schools), and outside sales employees.

b. Rules 216.27(91D) to 216.33(91D) deal with the information and data which must be kept for employees (other than executive, administrative, etc., employees) who are subject to the exemptions provided. Additionally, this rule also specifies the records needed for deductions from and additions to wages for "board, lodging, or other facilities," industrial homeworkers and employees whose tips are credited toward wages and requires the recording of more, fewer, or different items of information or data than required under the generally applicable record-keeping requirements of rule 216.2(91D).

216.1(3) *Relationship to other record-keeping and reporting requirements.* Nothing in this chapter shall excuse any party from complying with any record-keeping or reporting requirement imposed by any other federal, state or local law, ordinance, regulation or rule.

216.1(4) *Initial employment wage rate—employer's record.* If the employer pays an initial employment wage rate as specified in Iowa Code section 91D.1(1)*"d"* as amended by 2007 Iowa Acts, House File 1, the employer's records shall include an indication as to the starting and ending date the employee is paid the initial employment wage rate.

SOURCE: 29 CFR 516.1.

875—216.2(91D) Employees subject to minimum wage.

216.2(1) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:

a. Name in full, as used for social security record-keeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

b. Home address, including ZIP code;

c. Date of birth, if under 19;

d. Reserved;

e. Time of day and day of week on which the employee's workweek begins. If the employee is part of a work force or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole work force or establishment will suffice;

f. Basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis;

g. Hours worked each workday and total hours worked each workweek (for purposes of this rule, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of seven consecutive workdays);

h. Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;

i. Reserved;

j. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions;

k. Total wages paid each pay period; and

l. Date of payment and the pay period covered by payment.

216.2(2) *Records of retroactive payment of wages.* Every employer who makes retroactive payment of wages or compensation under the supervision of the labor commissioner, the administrator of the U.S. Department of Labor, Wage and Hour Division, or court order shall:

a. Record and preserve, as an entry on the pay records, the amount of the payment to each employee, the period covered by such payment, and the date of payment; and

b. Prepare a report of each payment on a receipt form provided by or authorized by the commissioner, and

1. Preserve a copy as part of the records,
2. Deliver a copy to the employee, and
3. File the original, as evidence of payment by the employer and receipt by the employee, with the commissioner within ten days after payment is made.

216.2(3) *Employees working on fixed schedules.* With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by 216.2(1)*"g,"* the schedule of daily and weekly hours the employee normally works. Also,

a. In weeks in which an employee adheres to this schedule, indicate by check mark, statement or other method that the hours were actually worked; and

b. In weeks in which more or less than the scheduled hours are worked, shows the exact number of hours worked each day and each week.

SOURCE: 29 CFR 516.2.

875—216.3(91D) Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to 875—subrule 215.4(1). With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in 875—218.1(91D) to 218.5(91D) (pertaining to so-called "white collar" employee exemptions), employers shall maintain and preserve records containing all the information and data required by 216.2(1) except paragraphs *"f"* and *"g"* and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and perquisites. (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc., with appropriate addenda such as "plus hospitalization and insurance plan A," "benefit package B," "two weeks' paid vacation," etc.).

SOURCE: 29 CFR 516.3.

875—216.4(91D) Posting of notices. Every employer employing any employees subject to the minimum wage provisions of the Iowa minimum wage Act shall post and keep posted a notice

explaining the Act, as prescribed by the division of labor, in conspicuous places in every establishment where such employees are employed so as to permit them to readily observe a copy.

SOURCE: 29 CFR 516.4.

875—216.5(91D) Records to be preserved three years. Each employer shall preserve for at least three years:

216.5(1) Payroll records. From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable rules.

216.5(2) Collective bargaining agreements relied upon for the exclusion of certain costs under the definition of "wage" as stated in 875—subrule 215.3(23).

216.5(3) Sales and purchase records. A record of

a. Total dollar volume of sales or business, and

b. Total volume of goods purchased or received during the periods (weekly, monthly, quarterly, etc.) in the form in which the employer maintains records in the ordinary course of business.

SOURCE: 29 CFR 516.5.

875—216.6(91D) Records to be preserved two years.

216.6(1) *Supplementary basic records.* Each employer required to maintain records under this chapter shall preserve for a period of at least two years:

a. *Basic employment and earnings records.* From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay-period basis (for example, units produced) when those amounts determine, in whole or in part, the pay-period earnings or wages of those employees.

b. *Wage rate tables.* From their last effective date, all tables or schedules of the employer which provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation.

216.6(2) *Order, shipping, and billing records.* From the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations.

216.6(3) *Records of additions to or deductions from wages paid:*

a. Those records relating to individual employees referred to in 216.2(1)*"j"*; and

b. All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.

SOURCE: 29 CFR 516.6.

875—216.7(91D) Place for keeping records and their availability for inspection.

216.7(1) *Place of records.* Each employer shall keep the records required by this chapter safe and accessible at the place or places of employment, or at one or more established central record-keeping offices where records are customarily maintained. Where the records are maintained at a central record-keeping office, other than in the place or places of employment, the records shall be made available within 72 hours following notice from the commissioner or a duly authorized and designated representative.

216.7(2) *Inspection of records.* All records shall be available for inspection and transcription by the commissioner.

SOURCE: 29 CFR 516.7.

875—216.8(91D) Computations and reports. Each employer required to maintain records under this chapter shall make extension, recomputation, or transcription of the records and shall submit to the division of labor the reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the commissioner may request in writing.

SOURCE: 29 CFR 516.8.

875—216.9(91D) Petitions for exceptions.

216.9(1) Submission of petitions for relief. Any employer or group of employers who, due to peculiar conditions under which they must operate, desire authority to maintain records in a manner other than required in this chapter, or to be relieved of preserving certain records for the period specified in this chapter, may submit a written petition to the administrator of the U.S. Department of Labor, Wage and Hour Division, requesting the authority, setting forth the reasons therefor. If the administrator will not grant a petition for lack of coverage under the federal Fair Labor Standards Act, the petitioner may petition the commissioner. Any exception granted by the administrator pursuant to 29 CFR 516.9 will be accepted by the commissioner.

216.9(2) Reserved.

SOURCE: 29 CFR 516.9.

875—216.10 Reserved.

EMPLOYEES SUBJECT TO MISCELLANEOUS EXEMPTIONS

875—216.11 to **216.26** Reserved.

875—216.27(91D) Board, lodging, or other facilities.

216.27(1) In addition to keeping other records required by this chapter, an employer who makes deductions from the wages of the employees for "board, lodging, or other facilities" (as these terms are used in the definition of "wage" as stated in 875—subrule 215.3(23)) furnished to them by the employer or by an affiliated person, or who furnishes "board, lodging, or other facilities" to employees as an addition to wages, shall maintain and preserve records substantiating the cost of furnishing each class of facility except as noted in 216.27(3). Separate records of the cost of each item furnished to an employee need not be kept. The requirements may be met by keeping combined records of the costs incurred in furnishing each class of facility, such as housing, fuel, or merchandise furnished through a company store or commissary. Where cost records are kept for a "class" of facility rather than for each individual article furnished to employees, the records shall also show the gross income derived from each class of facility, e.g., gross rentals in the case of houses, total sales through the store or commissary, total receipts from sales of fuel.

a. The records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the reasonable cost, as defined in 875—Chapter 217, and shall contain the data required to compute the amount of the depreciated investment in any assets allowable to the furnishing of the facilities, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets. If the assets include merchandise held for sale to employees, the records should contain data from which the average net investment in inventory can be determined.

b. No particular degree of itemization is prescribed. However, the amount of detail shown in these accounts should be consistent with good accounting practices and should be sufficient to enable the commissioner to verify the nature of the expenditure and the amount by reference to the basic records which must be preserved pursuant to 216.6(3)*"b."*

216.27(2) The employer shall maintain records showing on a workweek basis those additions to or deductions from wages where additions to or deductions from wages paid so affect the total cash wages

due in any workweek (even though the employee actually is paid on other than a workweek basis) as to result in the employee receiving less in cash than the applicable minimum hourly wage.

216.27(3) The records specified in this rule are not required with respect to an employee in any workweek in which the employee is not subject to the overtime provisions of the federal Fair Labor Standards Act, 29 U.S.C. 207, and receives not less than the applicable statutory minimum wage in cash for all hours worked in that workweek.

SOURCE: 29 CFR 516.27.

875—216.28(91D) Tipped employees.

216.28(1) With respect to each tipped employee whose wages are determined pursuant to the definition of "wage" in 215.3(23), the employer shall maintain and preserve payroll or other records containing all the information and data required in 216.2(1) and the following:

a. A symbol, letter or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;

b. Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070);

c. Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of 40 percent of the applicable statutory minimum wage). The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week;

d. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and

e. Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.

216.28(2) Reserved.

SOURCE: 29 CFR 516.28.

875—216.29 Reserved.

875—216.30(91D) Learners, apprentices, messengers, students, or persons with a disability employed under special certificates as provided in the federal Fair Labor Standards Act, 29 U.S.C. 214.

216.30(1) With respect to persons employed as learners, apprentices, messengers or full-time students employed outside of their school hours in any retail or service establishment, in agriculture, or in institutions of higher education, or persons with a disability employed at special minimum hourly rates under special certificates pursuant to the federal Fair Labor Standards Act, 29 U.S.C. 214, employers shall maintain and preserve records containing the same information and data required with respect to other employees employed in the same occupations.

For the purposes of this rule, the following definitions shall apply:

a. *"Apprentice"* means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade and in conformity with the standards of apprenticeship.

b. *"Full-time student"* means a student who receives primary instruction at the physical location of a bona fide educational institution. A full-time student retains that status during the student's winter, summer and other vacations. Employment must be in compliance with applicable child-labor laws. An agricultural or retail service establishment employer is permitted to employ not more than six full-time students per workday at subminimum wage. A full-time student certificate will not be issued for a period longer than one year, nor will it be issued retroactively. A subminimum wage of at least 85 percent of the applicable minimum wage is permitted.

c. *"Handicapped worker"* means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury for the work to be performed. *"Handicapped trainee"* means an individual whose earning is impaired by age or physical or mental deficiency or injury, and who is receiving or scheduled to receive on-the-job training in industry under any authorized vocational rehabilitation program.

The application for special certificate shall include the nature of the disability, a description of the occupation in which the worker is to be employed and the wage the firm proposes to guarantee the worker per hour. The nature of the disability shall be set out in detail.

When a wage is requested which is less than 50 percent of the minimum wage applicable, the application shall also contain evidence that the individual is multihandicapped or so severely impaired that the individual is unable to engage in competitive employment. *"Competitive employment"* is employment of a handicapped worker whose earning or productive capacity would yield wages equal to at least 50 percent of the minimum wage as wages which are commensurate with those for nonhandicapped workers in the industry in the vicinity for the same type, quality and quantity of work. For multihandicapped workers the rate shall be not less than 25 percent of the minimum wage.

d. *"Learner"* means a worker whose total experience in an authorized learner occupation in the industry is usually within the past three years.

e. *"Messenger"* means an individual engaged primarily in delivering letters and messages at a wage lower than the minimum wage.

f. *"Student-learner"* means a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis pursuant to a bona fide vocational training program. The student-learner must be at least 16 years of age. The student-learner must be at least 18 years of age if employed in any hazardous occupation. The number of student-learners to be employed in one establishment must not be more than a small proportion of its working force. The special minimum wage rate shall be not less than 75 percent of the applicable minimum wage.

REFERENCE/SOURCE: 29 U.S.C. 214, 29 CFR 519.4, 522.2.

216.30(2) In addition, each employer shall segregate on the payroll or pay records the names and required information and data with respect to those learners, apprentices, messengers, persons with a disability and students, employed under special certificates. A symbol or letter may be placed before each name on the payroll or pay records indicating that that person is a "learner," "apprentice," "messenger," "student," or "person with a handicap," employed under a special certificate.

216.30(3) The initial employment wage rate established in Iowa Code section 91D.1(1)*"d"* as amended by 2007 Iowa Acts, House File 1, shall be the basis for initial employment under this rule. The amount approved by a special order by the Secretary of Labor shall be effective if more than the amount specified in Iowa Code section 91D.1(1)*"d"* as amended by 2007 Iowa Acts, House File 1. If the Secretary of Labor's approved rate is lower than the initial employment wage rate, the initial employment wage rate shall be applicable for the period covered by the Secretary of Labor's order.

216.30(4) Federal special minimum wage certificates will be honored at the applicable Iowa minimum wage rate as applied to the certificate.

SOURCE: 29 CFR 516.30.

875—216.31(91D) Industrial homeworkers.

216.31(1) *Definitions.*

a. *"Industrial homeworker"* and *"homeworker,"* as used in this rule, means any employee employed or suffered or permitted to perform industrial homework for an employer.

b. *"Industrial homework,"* as used in this rule, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in production.

c. The meaning of the terms *"employ," "employee," "employer," "goods," "person,"* and *"production"* as used in this rule is the same as in 875—subrules 215.3(6), 215.3(7), 215.3(9), 215.3(12), and 215.3(17).

216.31(2) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every industrial homeworker employed:

a. Name in full, and on the same record, the employee's identifying symbol or number if used in place of name on any time, work, or payroll records. This shall be the same as that used for Social Security purposes.

b. House address, including ZIP code.

c. Date of birth, if under 19.

d. With respect to each lot of work:

(1) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun,

(2) Date on which work is turned in by worker and amount of such work,

(3) Kind of articles worked on and operations performed,

(4) Piece rates paid,

(5) Hours worked on each lot of work turned in,

(6) Wages paid for each lot of work turned in,

(7) Deductions for social security taxes, and

(8) Date of wage payment and pay period covered by payment.

e. With respect to each week:

(1) Hours worked each week,

(2) Wages earned for each week at regular piece rates,

(3) Extra pay due each week for overtime worked,

(4) Total wages earned each week, and

(5) Deductions for social security taxes.

f. With respect to any agent, distributor, or contractor:

(1) The name and address of each agent, distributor, or contractor through whom homework is distributed or collected and name, and

(2) The address of each homeworker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

g. Record of retroactive payment of wages. Every employer who makes retroactive payment of wages or compensation under the supervision of the administrator or the commissioner shall:

(1) Record and preserve, as an entry on the payroll or other pay records, the amount of such payment to each employee, the period covered by the payment, and the date of payment, and

(2) Prepare a report of each payment on the receipt form provided or authorized by the commissioner, and

1. Preserve a copy as part of the employer's records,

2. Deliver a copy to the employee, and

3. File the original, which shall evidence payment by the employer and receipt by the employee, with the commissioner within ten days after payment is made.

216.31(3) *Homework handbook.* In addition to the information and data required in 216.31(2), a separate handbook (to be obtained by the employer from the division and supplied by the employer to each worker) shall be kept for each homeworker. The information required therein shall be entered by the employer or the person distributing or collecting homework on behalf of the employer each time work is given out to or received from a homeworker. Except for the time necessary for the making of entries by the employer, the handbook must remain in the possession of the homeworker until such time as the division may request it. Upon completion of the handbook (that is, no space remains for additional entries) or termination of the homeworker's services, the handbook shall be returned to the employer for preservation in accordance with the rules in this chapter. A separate record and a separate handbook shall be kept for each person performing homework.

216.31(4) *Preservation of industrial homework certificates.* Certificates issued to permit homework in the restricted industries (29 CFR 530) shall be preserved in accordance with the regulations of 29 CFR 530.8 and in subrule 216.5(2).

SOURCE: 29 CFR 516.31.

875—216.32 Reserved.

875—216.33(91D) Employees employed in agriculture pursuant to 875—subrule 215.4(6).

216.33(1) No records, except as required under 216.33(6), need be maintained by an employer who did not use more than 500 days of agricultural labor in any quarter of the preceding calendar year, unless it can be reasonably anticipated that more than 500 days of agricultural labor will be used in at least one calendar quarter of the current calendar year. The 500-day test includes the work of agricultural workers supplied by crew leaders, or farm labor contractors, if the farmer is an employer of the workers, or a joint employer of the workers with the crew leader or farm labor contractor. However, members of the employer's immediate family are not included. (A "day" is any day during which an employee does agricultural work for one hour or more.)

216.33(2) If it can be reasonably anticipated that the employer will use more than 500 days of agricultural labor in at least one calendar quarter of the current calendar year, the employer shall maintain and preserve for each employee records containing all the information and data required by 216.2(1)*"a"* and *"b"* and the following:

a. Symbols or other identifications separately designating those employees who are

(1) Members of the employer's immediate family as defined in 875—paragraph 215.4(6)*"b,"*

(2) Hand harvest laborers as defined in 875—paragraph 215.4(6)*"c"* or *"d,"* and

(3) Employees principally engaged in the range production of livestock as defined in 875—paragraph 215.4(6)*"e."*

b. For each employee, other than members of the employer's immediate family, the number of days worked each week or each month.

216.33(3) For the entire year following a year in which the employer used more than 500 days of agricultural labor in any calendar quarter, the employer shall maintain, and preserve in accordance with rules 875—216.5(91D) and 875—216.6(91D), for each covered employee (other than members of the employer's immediate family, hand harvest laborers and livestock range employees as defined in 875—paragraphs 215.4(6)*"b," "c," "d,"* and *"e,"* records containing all the information and data required by 216.2(1) except paragraphs *"c"* and *"h."*

216.33(4) In addition to other required items, the employer shall keep on file with respect to each hand harvest laborer as defined in 875—paragraph 215.4(6)*"c"* for whom exemption is taken, a statement from each such employee showing the number of weeks employed in agriculture during the preceding calendar year.

216.33(5) With respect to hand harvest laborers as defined in 875—paragraph 215.4(6)*"d"* for whom exemption is taken, the employer shall maintain in addition to subrule 216.33(2), the minor's date of birth and name of the minor's parent or person standing in place of the parent.

216.33(6) Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 18 years of age on days when school is in session or on any day if the minor is employed in an occupation found to be hazardous by the commissioner shall maintain and preserve records containing the following data with respect to each and every such minor so employed:

a. Name in full,

b. Place where minor lives while employed (if the minor's permanent address is elsewhere, give both addresses), and

c. Date of birth.

216.33(7) Where a farmer and a bona fide independent contractor or crew leader are joint employers of agricultural laborers, each employer is responsible for maintaining and preserving the records

required by this rule. Duplicate records of hours and earnings are not required. The requirements will be considered met if the employer who actually pays the employees maintains and preserves the records specified in 216.33(3) and 216.33(6).

SOURCE: 29 CFR 516.33.

These rules are intended to implement Iowa Code chapter 91D.

[Filed emergency 11/8/89 after Notice 9/6/89—published 11/29/89, effective 1/1/90]
[Filed 11/2/94, Notice 6/22/94—published 11/23/94, effective 1/1/95]
[Filed 7/31/07, Notice 5/23/07—published 8/29/07, effective 10/3/07]

CHAPTER 217
WAGE PAYMENTS
[Prior to 11/4/98, see 347—Ch 217]

875—217.1 Reserved.

875—217.2(91D) Purpose and scope. This chapter addresses the definition of wages. "Wages" include the "reasonable cost," as determined by the commissioner, to an employer of furnishing any employee with board, lodging, or other facilities, if the board, lodging, or other facilities are customarily furnished by the employer to employees. In addition, the commissioner will determine the "fair value" of the facilities on the basis of average cost to the employer or to groups of employers similarly situated, on average value to groups of employees, or other appropriate measures of "fair value." Whenever determined and when applicable and pertinent, the "fair value" of the facilities involved shall be includable as part of "wages" instead of the actual measure of the costs of those facilities. However, the cost of board, lodging, or other facilities shall not be included as part of "wages" if excluded therefrom by a bona fide collective bargaining agreement.

SOURCE: 29 CFR 531.2.

875—217.3(91D) "Reasonable cost."

217.3(1) "Reasonable cost" is determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by the employer to the employees.

217.3(2) "Reasonable cost" does not include a profit to the employer or to any affiliated person.

217.3(3) Except whenever any determination made under rule 217.4(91D) is applicable, the "reasonable cost" to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer. If the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this rule, the term "good accounting practices" does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence.

217.3(4) The cost of furnishing "facilities" found by the commissioner to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not be included in computing wages.

The following is a list of facilities found by the commissioner to be primarily for the benefit or convenience of the employer. The list is intended to be illustrative rather than exclusive:

a. Tools of the trade and other materials and services incidental to carrying on the employer's business.

b. The cost of any construction by and for the employer.

c. The cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

SOURCE: 29 CFR 531.3.

875—217.4(91D) Determinations of "reasonable cost."

217.4(1) *Procedure.* Upon the commissioner's own motion or upon the petition of any interested person, the commissioner may determine generally or particularly the "reasonable cost" to an employer of furnishing any employee with board, lodging, or other facilities, if the board, lodging, or other facilities are customarily furnished by the employer to employees. Notice of proposed determination shall be published in the Iowa Administrative Bulletin as a Notice of Intended Action.

217.4(2) *Contents of petitions submitted by interested persons.* Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of "reasonable cost" shall include the following information:

a. The name and location of the employer's or employers' place or places of business;

b. A detailed description of the board, lodging, or other facilities furnished by the employer or employers, whether or not these facilities are customarily furnished by the employer or employers, and whether they are alleged to constitute "wages";

c. The charges or deductions made for the facility or facilities by the employer or employers;

d. When the actual cost of the facility or facilities is known, an itemized statement of the cost to the employer or employers of the furnished facility or facilities;

e. The cash wages paid;

f. The reason or reasons for which the determination is requested, including any reason or reasons why the determinations in 217.3(91D) should not apply; and

g. Whether an opportunity to make an oral presentation is requested; and, if it is requested, the inclusion of a summary of any expected presentation.

SOURCE: 29 CFR 531.4.

875—217.5(91D) Determinations of "fair value."

217.5(1) *Procedure.* The procedures governing the making of determinations of the "fair value" of board, lodging, or other facilities for defined classes of employees and in defined areas under the definition of wage shall be the same as that prescribed in rule 217.4(91D) with respect to determinations of "reasonable cost."

217.5(2) *Petitions of interested persons.* Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of "fair value" shall contain the information required under 875—subrule 215.3(23) and, to the extent possible, the following:

a. A proposed definition of the class or classes of employees involved;

b. A proposed definition of the area to which any requested determination would apply; and

c. Any measure of "fair value" of the furnished facilities which may be appropriate in addition to the cost of such facilities.

SOURCE: 29 CFR 531.5.

875—217.6(91D) Effects of collective bargaining agreements.

217.6(1) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

217.6(2) A collective bargaining agreement shall be deemed to be "bona fide" when it is made with a labor organization.

a. Which has been certified by the National Labor Relations Board, or Iowa public employment relations board, or

b. Which is the certified representative of the employees under the provisions of the National Labor Relations Act, as amended, the Railway Labor Act, as amended, or Iowa public employment relations Act.

217.6(3) Collective bargaining agreements made with representatives who have not been so certified will be ruled on individually upon submission to the commissioner.

SOURCE: 29 CFR 531.6.

875—217.7(91D) Request for review of tip credit.

217.7(1) Any employee (personally or through a representative) may request the commissioner to determine whether the actual amount of tips received is less than the amount determined by the employer as a wage credit. If the commissioner is satisfied the actual amount of tips is the lesser of these amounts, the amount paid the employee by the employer shall be deemed to have been increased by such lesser amount.

217.7(2) Requests for review and determination may be made in writing to the commissioner. Requests should be accompanied by a statement of tips received each week or each month over a representative period as reported by the employee to the employer for purposes of Internal Revenue Service reports. A request should also be accompanied by a statement showing the tip credit taken by the employer and any other information deemed pertinent by the petitioner. In any instance in which it appears that the tip credit claimed by the employer exceeds the amount of tips actually received by the tipped employee, the employer shall be apprised of the facts made available to the commissioner and be afforded the opportunity to submit any evidence the employer may care to present in support of the claim for tip credit before a determination is made.

SOURCE: 29 CFR 531.7.

875—217.8 to **217.24** Reserved.

875—217.25(91D) Introductory statement.

217.25(1) Reserved.

217.25(2) The interpretations of the law contained in this chapter are official interpretations of the division with respect to the application under described circumstances of the provisions of law which they discuss. The interpretations indicate with respect to the methods of paying the compensation required and the application of the law.

SOURCE: 29 CFR 531.25.

875—217.26 Reserved.

875—217.27(91D) Payment in cash or its equivalent required. Payments of the prescribed wages shall be in currency or negotiable instrument payable at par. Although these rules provide for the inclusion in the "wage" paid to any employee, under the conditions which it prescribes of the "reasonable cost," or "fair value" of furnishing the employee with board, lodging, or other facilities, the employer can only include the furnishing of facilities as a portion of the prescribed wage if the employee has agreed in writing prior to the period of employment for which payment will be made to receive payment in a form other than currency or negotiable instrument payable at par. In addition, a tipped employee's wages may consist in part of tips. These rules permit and govern the payment of wages in other than cash.

SOURCE: 29 CFR 531.27.

875—217.28 Reserved.

875—217.29(91D) Board, lodging, or other facilities. The inclusion of board, lodging and other facilities as part of wages applies under the following situations:

217.29(1) Where board, lodging, or other facilities are furnished in addition to a stipulated wage; and

217.29(2) Where charges for board, lodging, or other facilities are deducted from a stipulated wage. The use of the word "furnishing" clearly indicates this was intended to apply to all facilities furnished by the employer as compensation to the employee, regardless of whether the employer calculates charges for the facilities as additions to or deductions from wages.

SOURCE: 29 CFR 531.29.

875—217.30(91D) "Furnished" to the employee. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where customarily "furnished" to the employee. Not only shall the employee receive the benefits of the facility for which the employee is charged, but it is essential that the employee's acceptance of the facility be voluntary and uncoerced.

SOURCE: 29 CFR 531.30.

875—217.31(91D) "Customarily" furnished. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only where "customarily" furnished to the employee. Where facilities are "furnished" to the employee, it will be considered a sufficient satisfaction of this requirement if the facilities are furnished regularly by the employer to the employer's employees or if the same or similar facilities are customarily furnished by other employers engaged in the same or similar trade, business, or occupation in the same or similar communities.

SOURCE: 29 CFR 531.31.

875—217.32(91D) "Other facilities."

217.32(1) "Other facilities," as used in this chapter, shall be something similar to board or lodging. The following items are deemed to be within the meaning of the term:

a. Meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees;

b. Meals, dormitory rooms, and tuition furnished by a college to its student employees;

c. Housing furnished for dwelling purposes;

d. General merchandise furnished without cost to the employee at company stores and commissaries (including articles of food, clothing, and household effects);

e. Fuel (including coal, kerosene, firewood, and lumber slabs), electricity, water, and gas furnished for the noncommercial personal use of the employee; and

f. Transportation furnished employees between their homes and work where the travel time does not constitute compensable hours worked and the transportation is not an incident of and necessary to the employment.

217.32(2) Shares of capital stock in an employer company, representing only a contingent proprietary right to participate in profits and losses or in the assets of the company at some future dissolution date, are not "facilities."

217.32(3) The cost of furnishing "facilities" which are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages. Items in addition to those set forth in rule 217.3(91D) which are primarily for the benefit or convenience of the employer and are not therefore to be considered "facilities" include:

a. Safety caps, explosives, and miners' lamps (in the mining industry);

b. Electric power (used for commercial production in the interest of the employer);

c. Company police and guard protection;

d. Taxes and insurance on the employer's buildings which are not used for lodgings furnished to the employee;

e. Dues to chambers of commerce and other organizations used, for example, to repay subsidies given to the employer to locate a factory in a particular community;

f. Transportation charges where the transportation is an incident of and necessary to the employment (as in the case of maintenance-of-way employees of a railroad);

g. Charges for rental of uniforms where the nature of the business requires the employee to wear a uniform; and

h. Medical services and hospitalization which the employer is bound to furnish under workers' compensation acts, or similar law.

217.32(4) Meals are always regarded as primarily for the benefit and convenience of the employee.

SOURCE: 29 CFR 531.32.

875—217.33 and **217.34** Reserved.

875—217.35(91D) "Free and clear" payment; "kickbacks." Whether in cash or in facilities, "wages" cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or "free and clear." The wage requirements will not be met where the employee "kicks back" directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the "kickback" is made in cash or in other than cash.

SOURCE: 29 CFR 531.35.

875—217.36(91D) Payment where additions or deductions are involved.

217.36(1) This chapter applies only to the applicable minimum wage for all hours worked. Any deduction indicated in this chapter as being permitted must meet the requirements of Iowa Code section 91A.5.

To illustrate, where an employee works 40 hours a week at a cash wage rate of $3.85 an hour and is paid $154 in cash free and clear at the end of the workweek, and in addition is furnished facilities valued at $10, no consideration need be given to the question of whether the facilities meet the requirements, since the employee has received in cash the applicable minimum wage of $3.85 an hour for all hours worked. Similarly, where an employee is employed at a rate of $5 an hour and during a particular workweek works 40 hours for which cash payment of $200 is made, the employer having deducted $30 from wages for facilities furnished, whether the deduction meets the requirement of this chapter need not be considered, since the employee is still receiving, after the deduction has been made, a cash wage in excess of the required minimum hourly wage.

Deductions for board, lodging, or other facilities may be made in workweeks even if the deductions reduce the cash wage below the minimum, provided the prices charged do not exceed the "reasonable cost" of the facilities. When items are furnished the employee at a profit, the deductions from wages are considered to be illegal only to the extent that the profit reduces the wage (which includes the "reasonable cost" of the facilities) below the required minimum.

217.36(2) Deductions for articles such as tools, miners' lamps, dynamite caps, and other items which do not constitute "board, lodging, or other facilities" may likewise be made if the employee nevertheless received the required minimum wage in cash free and clear; but to the extent that they reduce the wages of the employee in any such workweek below the minimum required, they are illegal. However, any deduction indicated as being permitted must meet the requirements of Iowa Code section 91A.5.

SOURCE: 29 CFR 531.36.

875—217.37(91D) Offsets. An employer shall not use any portion of an employer's current or future earnings to offset past minimum wage obligations or payments.

875—217.38(91D) Amounts deducted for taxes. Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency may be included as "wages" although they do not technically constitute "board, lodging, or other facilities." This principle is applicable to the employee's share of social security, as well as other federal, state, or local taxes, levies, and assessments. No deduction may be made for any tax or share of a tax which the law requires to be borne by the employer.

SOURCE: 29 CFR 531.38.

875—217.39(91D) Payments to third persons pursuant to court order.

217.39(1) Where an employer is legally obliged, as by order of a court of competent and appropriate jurisdiction, to pay a sum for the benefit or credit of the employee to a creditor of the employee, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceeding, deduction from wages of the actual sum so paid is not prohibited: provided that neither the employer nor any person acting in the employer's behalf or interest derives any profit or benefit from the transaction. In those cases, payment to the third person for the benefit and credit of the employee will be considered equivalent, for the purposes of this chapter, to payment to the employee.

217.39(2) The amount of any individual's earnings withheld by means of any legal or equitable procedure for the payment of any debt may not exceed the restriction imposed by state or federal garnishment laws; Iowa Code section 642.21(1989) or the federal Consumer Protection Act, Title III, 15 U.S.C. Sections 1671-1677(1982).

SOURCE: 29 CFR 531.39.

875—217.40(91D) Payments to employee's assignee.

217.40(1) Where an employer is directed by a voluntary assignment or order of an employee to pay a sum for the benefit of the employee to a creditor, donee, or other third party, deduction from wages of the actual sum so paid is not prohibited: Provided, that neither the employer nor any person acting in the employer's behalf or interest, directly or indirectly, derives any profit or benefit from the transaction. In those cases, payment to the third person for the benefit and credit of the employee will be considered equivalent, for purposes of this chapter, to payment to the employee. Any payments to employee's assignees must be pursuant to a written authorization by the employee.

217.40(2) No payment by the employer to a third party will be recognized as a valid payment of compensation where it appears that payment was part of a plan or arrangement to evade or circumvent the requirements of this chapter.

SOURCE: 29 CFR 531.40.

875—217.41 to **217.49** Reserved.

875—217.50(91D) Payments to tipped employees.

217.50(1) In determining the wage of a tipped employee, the amount paid to a tipped employee by the employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 40 percent of the applicable minimum wage rate, except that in the case of an employee who (either personally or acting through a representative) shows to the satisfaction of the commissioner that the actual amount of tips received was less than the amount determined by the employer as the amount by which the wage paid the employee was deemed to be increased under this sentence, the amount paid the employee by the employer shall be deemed to have been increased by the lesser amount.

217.50(2) "Tipped employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips.

SOURCE: 29 CFR 531.50.

875—217.51(91D) Conditions for taking tip credits in making wage payments. The wage credit permitted on account of tips may be taken only with respect to wage payments made under Iowa Code section 91D.1(1)*"c"* to those employees whose occupations in the workweeks for which the payments are made are those of "tipped employees." To determine whether a tip credit may be taken in paying wages to a particular employee it is necessary to know what payments constitute "tips," whether the employee receives "more than $30 a month" in tipped payments in the occupation in which the employee is engaged, and whether in the occupation the employee receives these payments in the amount "customarily and regularly." The principles applicable to a resolution of these questions are discussed in rules 217.52(91D) to 217.59(91D).

SOURCE: 29 CFR 531.51.

875—217.52(91D) General characteristics of "tips." A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. The payment is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally the customer has the right to determine who shall be the recipient of the gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to that employee, which the employee may freely use absent of any control by the employer, may be counted in determining whether the employee is a "tipped employee" and in applying the provisions which govern wage credits for tips.

SOURCE: 29 CFR 531.52.

875—217.53(91D) Payments which constitute tips. In addition to cash sums presented by customers which an employee keeps, tips received by an employee include amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described such as theater tickets, passes, or merchandise, are not counted as tips received by the employee for purposes of this chapter.

SOURCE: 29 CFR 531.53.

875—217.54(91D) Tip pooling. Where employees practice tip splitting, as where food servers give a portion of their tips to the busers, both the amounts retained by the food servers and those given the busers are considered tips of the individuals who retain them. Similarly, where an accounting is made to an employer for information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among

themselves, the amounts received and retained by each employee as the individual's own are counted as the employee's tips.

SOURCE: 29 CFR 531.54.

875—217.55(91D) Examples of amounts not received as tips.

217.55(1) A compulsory charge for service, such as 15 percent of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to employees, cannot be counted as a tip received. Similarly, where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to employees of the hotel, the amounts so distributed are not counted as tips received. Likewise, where the employment agreement is such that amounts presented by customers as tips belong to the employer and must be credited or turned over to the employer, the employee is in effect collecting for the employer additional income from the operations of the latter's establishment. Even though the amounts are not collected by imposition of any compulsory charge on the customer, plainly the employee is not receiving tips. The amounts received from customers are the employer's property, not the employee's, and do not constitute tip income to the employee.

217.55(2) Service charges and other similar sums which become part of the employer's gross receipts are not tips. However, where the sums are distributed by the employer to the employees, the amounts may be used in their entirety to satisfy the monetary requirements of this chapter. Also, if pursuant to an employment agreement the tips received by an employee must be credited or turned over to the employer, the sums may, after receipt by the employer, be used by the employer to satisfy the monetary requirements of this chapter. In those instances, there is no applicability of the 40 percent limitation on tip credits provided by Iowa Code section 91D.1(1)*"c."*

SOURCE: 29 CFR 531.55.

875—217.56(91D) "More than $30 a month in tips."

217.56(1) *Tipped employee.* An employee is a "tipped employee" when, in the occupation in which the employee is engaged, the amounts the employee receives as tips customarily and regularly total "more than $30 a month." An employee employed in an occupation in which the tips received meet this minimum standard is a "tipped employee" for whom the wage credit provided by 875—subrule 215.3(23) may be taken in computing the compensation due the employee for employment in the occupation, whether the employee is employed in it full-time or part-time. An employee employed full-time or part-time in an occupation in which the employee does not receive more than $30 a month in tips customarily and regularly is not a "tipped employee" and must receive the full compensation required without any deduction for tips received.

217.56(2) *Month.* The definition of tipped employee does not require that the calendar month be used in determining whether more than $30 a month is customarily and regularly received as tips. Any appropriate recurring monthly period beginning on the same day of the calendar month may be used.

217.56(3) *Individual tip receipts are controlling.* An employee must customarily and regularly receive more than $30 a month in tips in order to qualify as a tipped employee. An employee who is part of a group which has a record of receiving more than $30 a month in tips will not qualify that employee. For example, a food server who is newly hired will not be considered a tipped employee merely because the other food servers in the establishment receive tips in the requisite amount. The method of applying the test in initial and terminal months of employment is addressed in rule 217.58(91D).

217.56(4) *Significance of minimum monthly tip receipts.* More than $30 a month in tips customarily and regularly received by the employee is a minimum standard that must be met before any wage credit for tips is determined.

217.56(5) *Dual jobs.* In some situations an employee is employed in a dual job, as for example, where a desk clerk in a hotel also serves as a food server. If the employee customarily and regularly receives at least $30 a month in tips for work as a food server, the employee is a tipped employee only with respect to the employment as a food server. The employee is employed in two occupations, and

no tip credit can be taken for hours of employment in the occupation for which the employee does not meet the tip qualification. The situation is distinguishable from that of a food server who spends part of the time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses. The related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips.

SOURCE: 29 CFR 531.56.

875—217.57(91D) Receiving the minimum amount "customarily and regularly." The employee must receive more than $30 a month in tips "customarily and regularly" in the occupation in which the employee is engaged in order to qualify as a tipped employee. If it is known that the employee always receives more than the stipulated amount each month, as may be the case with many employees in occupations such as those of food server, bellhop, taxicab driver, barber, or beautician, the employee will qualify and the tip credit provisions may be applied. Alternatively, an employee who only occasionally or sporadically receives tips totaling more than $30 a month, such as at holidays when customers may be more generous than usual, will not be deemed a tipped employee. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which the employee normally and recurrently receives more than $30 a month in tips, the employee will be considered a tipped employee even though occasionally because of sickness, vacation, seasonal fluctuations or the like, the employee fails to receive more than $30 in tips in a particular month.

SOURCE: 29 CFR 531.57.

875—217.58(91D) Initial and terminal months. An exception to the requirement that an employee, whether full-time, part-time, permanent or temporary, will qualify as a tipped employee only if the employee customarily and regularly receives more than $30 a month in tips is made in the case of initial and terminal months of employment. In those months the purpose of the provision for tipped employees would seem fulfilled if qualification as a tipped employee is based on receipt of tips in the particular week or weeks of the month at a rate in excess of $30 a month, where the employee has worked less than a month because employment started or terminated during the month.

SOURCE: 29 CFR 531.58.

875—217.59(91D) The tip wage credit. In determining compliance with the wage payment requirements, the amount paid to a tipped employee by an employer is deemed to be increased on account of tips by an amount which cannot exceed 40 percent of the minimum wage applicable to the employee in the workweek for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable. The credit allowed on account of tips may be less than 40 percent of the applicable minimum wage; it cannot be more. The actual amount shall be determined by the employer on the basis of the employer's information concerning the tipping practices and receipts in the establishment. However, an employee who can show to the satisfaction of the commissioner that the actual amount of tips received was less than the amount determined by the employer as a tip credit shall receive an appropriate wage adjustment. It is presumed that in the application of this special provision the employee will be receiving at least the maximum tip credit in actual tips. If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips. An employee may request review of tip credit determinations made by employers, in the event that the employee considers that the tip credit taken exceeds actual tips. The tip credit may be taken only for hours worked by the employee in an occupation in which the employee qualifies as a tipped employee. Under employment agreements requiring tips to be turned over or credited to the

employer to be treated by the employer as part of gross receipts, the employer shall pay the employee the full minimum hourly wage, since for all practical purposes the employee is not receiving tip income.

SOURCE: 29 CFR 531.59.

875—217.60 Reserved.

These rules are intended to implement Iowa Code chapter 91D.

[Filed emergency 11/8/89 after Notice 9/6/89—published 11/29/89, effective 1/1/90]

[Filed 11/2/94, Notice 6/22/94—published 11/23/94, effective 1/1/95]

CHAPTER 218
EMPLOYEES EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESPERSON

[Prior to 11/4/98, see 347—Ch 218]

875—218.1(91D) Executive. "Employee employed in a bona fide executive…capacity" means any employee:

218.1(1) Whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

218.1(2) Who customarily and regularly directs the work of two or more other employees therein;

218.1(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

218.1(4) Who customarily and regularly exercises discretionary powers;

218.1(5) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of the hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in 218.1(1) to 218.1(4) of this definition: Provided, that this subrule shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which employed; and

218.1(6) Who is compensated for services on a salary basis at a rate of not less than $310 per week, exclusive of board, lodging, or other facilities, provided that an employee who is compensated on a salary basis at a rate of not less than $500 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this rule.

SOURCE: 29 CFR 541.1.

875—218.2(91D) Administrative. "Employee employed in a bona fide…administrative…capacity" means any employee:

218.2(1) Whose primary duty consists of either:

a. The performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, or

b. The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

218.2(2) Who customarily and regularly exercises discretion and independent judgment; and

218.2(3) *a.* Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as those terms are defined in this chapter), or

b. Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

c. Who executes under only general supervision special assignments and tasks; and

218.2(4) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of the employee hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in 218.2(1) to 218.2(3); and

218.2(5) *a.* Who is compensated for services on a salary or fee basis at a rate of not less than $310 per week, exclusive of board, lodging, or other facilities, or

b. Who, in the case of academic administrative personnel, is compensated for services as required by 218.2(5)*"a"* or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which employed, provided that an employee who is compensated on a salary or fee basis at a rate of not less than $500 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in 218.2(1) of this rule, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all the requirements of this rule.

SOURCE: 29 CFR 541.2.

875—218.3(91D) Professional. "Employee employed in a bona fide…professional capacity" means any employee:

218.3(1) Whose primary duty consists of the performance of:

a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes,

b. Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

c. Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which employed;

218.3(2) Whose work requires the consistent exercise of discretion and judgment in its performance;

218.3(3) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

218.3(4) Who does not devote more than 20 percent of the hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in 218.3(1) to 218.3(3);

218.3(5) Who is compensated for services on a salary basis at a rate of not less than $340 per week, exclusive of board, lodging, or other facilities, provided that this subrule shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in 218.3(1)*"c,"* provided that an employee who is compensated on a salary or fee basis at a rate of not less than $500 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in 218.3(1)*"a"* to 218.3(1)*"c,"* which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this rule.

SOURCE: 29 CFR 541.3.

875—218.4 Reserved.

875—218.5(91D) Outside salesperson. "Employee employed... in the capacity of outside salesperson" means any employee:

218.5(1) Who is employed for the purpose of and who is customarily and regularly engaged away from the employer's place or places of business in:

a. Making sales which include any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition, or

b. Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

218.5(2) Whose hours of work of a nature other than that described in 218.5(1)*"a"* or *"b"* do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer, provided that work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

SOURCE: 29 CFR 541.5.

875—218.6(91D) Special provision for motion picture producing industry. The requirement of rules 218.1(91D) to 218.3(91D) that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $500 a week (exclusive of board, lodging, or other facilities).

SOURCE: 29 CFR 541.5a.

875—218.7 to **218.100** Reserved.

BONA FIDE EXECUTIVE CAPACITY

875—218.101(91D) General. The work described in 218.1(1) to 218.1(4) and the activities directly and closely related to that work will be referred to as "exempt" work, while other activities will be referred to as "nonexempt" work.

SOURCE: 29 CFR 541.101.

875—218.102(91D) Management.

218.102(1) In the usual situation the determination of whether a particular kind of work is exempt or nonexempt in nature is not difficult. In the vast majority of cases the bona fide executive employee performs managerial and supervisory functions which are easily recognized as within the scope of the exemption.

218.102(2) For example, work similar to the following is exempt work when it is performed by an employee in the management of the employee's department or the supervision of employees:

a. Interviewing, selecting, and training of employees;

b. Setting and adjusting their rates of pay and hours of work;

c. Directing their work;

d. Maintaining their production or sales records for use in supervision or control;

e. Appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status;

f. Handling their complaints and grievances and disciplining them when necessary;

g. Planning the work;

h. Determining the techniques to be used;

i. Apportioning the work among the workers;

j. Determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold;

k. Controlling the flow and distribution of materials or merchandise and supplies; and

l. Providing for the safety of the employees and the property.

SOURCE: 29 CFR 541.102.

875—218.103(91D) Primary duty. A determination of whether an employee has management as the primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case, primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of the time in management would have management as the primary duty. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of the time in managerial duties, the employee might nevertheless have management as the primary duty if the other pertinent factors support the conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, the employee's relative freedom from supervision, and the relationship between the employee's salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

SOURCE: 29 CFR 541.103.

875—218.104(91D) Department or subdivision.

218.104(1) In order to qualify under 218.1(91D), the employee's managerial duties must be performed with respect to the enterprise in which the employee is employed or a customarily recognized department or subdivision thereof. The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of persons assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. In order to properly classify an individual as an executive, the employee must be more than merely a supervisor of two or more employees; nor is it sufficient that the employee merely participate in the management of the unit. The employee must be in charge of and have as the primary duty the management of a recognized unit which has a continuing function.

218.104(2) In the vast majority of cases there is no difficulty in determining whether an individual is in charge of a customarily recognized department or subdivision of a department. For example, where an enterprise comprises more than one establishment, the employee in charge of each establishment may be considered in charge of a subdivision of the enterprise.

218.104(3) The unit supervised need not be physically within the employer's establishment and may move from place to place, and that continuity of the same subordinate personnel is not absolutely essential to the existence of a recognized unit with a continuing function, although in the ordinary case a fixed location and continuity of personnel are both helpful in establishing the existence of a unit.

SOURCE: 29 CFR 541.104.

875—218.105(91D) Two or more other employees.

218.105(1) An employee will qualify as an "executive" under 218.1(91D) only if the employee customarily and regularly supervises at least two full-time employees or the equivalent. For example, if the "executive" supervises one full-time and two part-time employees, one of whom works mornings and one, afternoons, or four part-time employees, two of whom work mornings and two, afternoons, this requirement would be met.

218.105(2) The employees supervised must be employed in the department which the "executive" is managing.

218.105(3) to **218.105(5)** Reserved.

SOURCE: 29 CFR 541.105.

875—218.106(91D) Authority to hire or fire. Rule 218.1(91D) requires that an exempt executive employee have the authority to hire or fire other employees or that the exempt executive employee's suggestions and recommendations as to hiring or firing and as to advancement and promotion or

any other change of status of the employees whom the executive supervises will be given particular weight. Thus, no employee, whether high or low in the hierarchy of management, can be considered as employed in a bona fide executive capacity unless the executive is directly concerned either with the hiring or the firing and other change of status of the employees under the executive's supervision, whether by direct action or by recommendation to those to whom the hiring and firing functions are delegated.

SOURCE: 29 CFR 541.106.

875—218.107(91D) Discretionary powers.

218.107(1) An exempt executive employee shall customarily and regularly exercise discretionary powers. A person whose work is so completely routinized that the person has no discretion does not qualify for exemption.

218.107(2) The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of duties. The requirement is not met by the occasional exercise of discretionary powers.

SOURCE: 29 CFR 541.107.

875—218.108(91D) Work directly and closely related.

218.108(1) This phrase brings within the category of exempt work not only the actual management of the department and the supervision of the employees therein, but also activities which are closely associated with the performance of the duties involved in the managerial and supervisory functions or responsibilities. The supervision of employees and the management of a department include a great many directly and closely related tasks which are different from the work performed by subordinates and are commonly performed by supervisors because they are helpful in supervising the employees or contribute to the smooth functioning of the department for which they are responsible. Frequently, this exempt work is of a kind which, in establishments that are organized differently or which are larger and have greater specialization of function, may be performed by a nonexempt employee hired especially for that purpose.

218.108(2) to **218.108(7)** Reserved.

SOURCE: 29 CFR 541.108.

875—218.109(91D) Emergencies.

218.109(1) Under certain occasional emergency conditions, work which is normally performed by nonexempt employees and is nonexempt in nature will be directly and closely related to the performance of the exempt functions of management and supervision and will therefore be exempt work. In effect, this means that a bona fide executive who performs work of a normally nonexempt nature on rare occasions because of the existence of a real emergency will not, because of the performance of the emergency work, lose the exemption. Bona fide executives include among their responsibilities the safety of the employees under their supervision, the preservation and protection of the merchandise, machinery or other property of the department or subdivision in their charge from damage due to unforeseen circumstances, and the prevention of widespread breakdown in production, sales, or service operations. Consequently, when conditions beyond control arise which threaten the safety of the employees, or a cessation of operations, or serious damage to the employer's property, any manual or other normally nonexempt work performed in an effort to prevent such results is considered exempt work and is not included in computing the percentage limitation on nonexempt work.

218.109(2) Subrule 218.109(1) is not applicable to nonexempt work arising out of occurrences which are not regular, predictable and hence controllable.

218.109(3) and **218.109(4)** Reserved.

SOURCE: 29 CFR 541.109.

875—218.110(91D) Occasional tasks. In determining whether occasional tasks are directly and closely related to the performance of the management duties, consideration should be given to whether the work is:

1. The same as the work performed by any of the subordinates of the executive;
2. A specifically assigned task of the executive employees;
3. Practicably delegable to nonexempt employees in the establishment; or
4. Repetitive and frequently recurring.

SOURCE: 29 CFR 541.110.

875—218.111(91D) Nonexempt work generally.

218.111(1) "Nonexempt work" includes all work other than that described in 218.1(1) to 218.1(4) and the activities directly and closely related to that work.

218.111(2) Nonexempt work is easily identifiable where, as in the usual case, it consists of work of the same nature as that performed by the nonexempt subordinates of the "executive." It is more difficult to identify in cases where supervisory employees spend a significant amount of time in activities not performed by any of their subordinates and not consisting of actual supervision and management. In those cases careful analysis of the employee's duties with reference to the phrase "directly and closely related to the performance of the work described" will usually be necessary in arriving at a determination.

SOURCE: 29 CFR 541.111.

875—218.112(91D) Percentage limitations on nonexempt work.

218.112(1) *Exemption as an executive.* An employee will not qualify for exemption as an executive if the employee devotes more than 20 percent, or in the case of an employee of a retail or service establishment if the employee devotes as much as 40 percent, of the hours worked in the workweek to nonexempt work. This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

218.112(2) *Maximum allowance application.*

a. The maximum allowance of 20 percent for nonexempt work applies unless the establishment by which the employee is employed qualifies for the higher allowance as a retail or service establishment. An establishment must be a distinct physical place of business, open to the general public, which is engaged on the premises in making sales of goods or services to which the concept of retail selling or servicing applies. An establishment must make at least 75 percent of its annual dollar volume of sales of goods or services from sales that are both not for resale and recognized as retail in the particular industry. Types of establishments which may meet these tests include stores selling consumer goods to the public; hotels; motels; restaurants; some types of amusement or recreational establishments (but not those offering wagering or gambling facilities); hospitals, or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or deficient residing on the premises, if open to the general public; public parking lots and parking garages; auto repair shops; gasoline service stations (but not truck stops); funeral homes; cemeteries; etc.

b. Reserved.

c. An establishment engaged in laundering, cleaning, or repairing clothing or fabrics is not a retail or service establishment.

218.112(3) *Percentage limitations—exceptions.* There are two special exceptions to the percentage limitations of 218.112(1):

a. That relating to the employee in "sole charge" of an independent or branch establishment, and

b. That relating to an employee owning a 20 percent interest in the enterprise in which the employee is employed. These except the employee only from the percentage limitations on nonexempt

work. They do not except the employee from any of the other requirements of 218.1(91D). Thus, while the percentage limitations on nonexempt work are not applicable, an employee would not qualify for the exemption if the employee performs so much nonexempt work that the employee could no longer meet the requirement of 218.1(1) that the primary duty must consist of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof.

SOURCE: 29 CFR 541.112.

875—218.113(91D) Sole-charge exception.

218.113(1) An exception from the percentage limitations on nonexempt work is provided in 218.1(5) for "an employee who is in sole charge of an independent establishment or a physically separated branch establishment. . . " These employees are considered to be employed in a bona fide executive capacity even though they exceed the applicable percentage limitation on nonexempt work.

218.113(2) The term "independent establishment" must be given full weight. The establishment must have a fixed location and must be geographically separated from other company property. The management of operations within one among several buildings located on a single or adjoining tracts of company property does not qualify for the exemption under this heading. In the case of a branch, there must be a true and complete physical separation from the main office.

SOURCE: 29 CFR 541.113.

875—218.114(91D) Exception for owners of 20 percent interest.

218.114(1) An exception from the percentage limitations on nonexempt work is provided for an employee "who owns at least a 20 percent interest in the enterprise" in which the employee is employed. This provision recognizes the special status of a shareholder of an enterprise who is actively engaged in its management.

218.114(2) The exception is available to an employee owning a bona fide 20 percent equity in the enterprise in which the employee is employed regardless of whether the business is a corporate or other type of organization.

SOURCE: 29 CFR 541.114.

875—218.115(91D) Working supervisor.

218.115(1) The primary purpose of the exclusionary language placing a limitation on the amount of nonexempt work is to distinguish between the bona fide executive and the "working" supervisor who regularly performs "production" work or other work which is unrelated or only remotely related to the employee's supervisory activities. (The term "working" supervisor is used in this chapter in the sense indicated in the text and should not be construed to mean only one who performs work similar to that performed by subordinates.)

218.115(2) Reserved.

SOURCE: 29 CFR 541.115.

875—218.116(91D) Trainees, executive. The exemption is applicable to an employee employed in a bona fide executive capacity and does not include employees training to become executives and not actually performing the duties of an executive.

SOURCE: 29 CFR 541.116.

875—218.117(91D) Amount of salary required.

218.117(1) Compensation on a salary basis at a rate of not less than $310 per week, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The $310 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the

employee is compensated biweekly on a salary basis of $620, semimonthly on a salary basis of $671.68 or monthly on a salary basis of $1343.35. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

218.117(2) Reserved.

218.117(3) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. Alternatively, the sale of the facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons is not prohibited.

SOURCE: 29 CFR 541.117.

875—218.118(91D) Salary basis.

218.118(1) *Eligibility.* An employee will be considered to be paid "on a salary basis" if, under the employee's employment agreement, the employee regularly receives each pay period, on a weekly or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in this subrule, the employee must receive full salary for any week in which the employee performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which the employee performs no work.

a. An employee will not be considered to be "on a salary basis" if deductions from the predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

b. Deductions may be made, however, when the employee is absent from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the employee's salary for the absences.

c. Deductions may also be made for absences of a day or more occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for the absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. It is not required that the employee be paid any portion of the salary for the day or days for which the employee receives compensation for leave under the plan, policy or practice. Similarly, if the employer operates under a statutorily mandated or private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of a work-related accident, the "salary basis" requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

d. Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

e. Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee's salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant, or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

f. The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In that case,

the exemption would not be applicable to the employee during the entire period when deductions were being made. Alternatively, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for the deductions and promises to comply in the future.

218.118(2) *Minimum guarantee plus extras.* Salary may consist of a predetermined amount constituting all or part of the employee's compensation.

218.118(3) *Initial and terminal weeks.* Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement.

SOURCE: 29 CFR 541.118.

875—218.119(91D) Special proviso for high-salaried executives.

218.119(1) Rule 218.1(91D) contains an upset or high-salary proviso for managerial employees who are compensated on a salary basis at a rate of not less than $500 per week exclusive of board, lodging, or other facilities. This highly paid employee is deemed to meet all the requirements in 218.1(1) to 218.1(6) if the employee's primary duty consists of the management of the enterprise in which employed or of a customarily recognized department or subdivision thereof and includes the customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test that employee's qualifications in detail under 218.1(1) to 218.1(6).

218.119(2) Reserved.

218.119(3) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

SOURCE: 29 CFR 541.119.

875—218.120 to **218.200** Reserved.

BONA FIDE ADMINISTRATIVE CAPACITY

875—218.201(91D) Types of administrative employees.

218.201(1) *Exemption as administrative employee.* Three types of employees are described in 218.2(3) who, if they meet the other tests in rule 218.2(91D), qualify for exemption as "administrative" employees.

a. Executive and administrative assistants (the assistant to a proprietor or to an executive or administrative employee). Typical titles of persons in this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, administrative assistant and, in retail or service establishments, assistant manager and assistant buyer.

b. Staff employees.

(1) Employees included are those who can be described as staff rather than line employees, or as functional rather than department heads. They include among others employees who act as advisory specialists to the management. Typical examples of advisory specialists are tax experts, insurance experts, sales research experts, wage-rate analysts, investment consultants, foreign exchange consultants, and statisticians.

(2) Also included are persons in charge of a so-called functional department, which may frequently be a one-person department. Typical examples are credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations directors.

c. Those who perform special assignments.

(1) These are persons who perform special assignments, often away from the employer's place of business. Typical titles of such persons are lease buyers, field representatives of utility companies, location managers of motion picture companies, and district gaugers for oil companies.

(2) This classification also includes employees whose special assignments are performed entirely or partly inside their employer's place of business. Examples are special organization planners, customers' brokers in stock exchange firms, so-called account executives in advertising firms and contact or promotion persons of various types.

218.201(2) *Job titles insufficient as yardsticks.*

a. The employees for whom exemption is sought under the term "administrative" have extremely diverse functions and a wide variety of titles. A title alone is of little or no assistance in determining the true importance of an employee to the employer or the employee's exempt or nonexempt status.

b. The exempt or nonexempt status of any particular employee must be determined on the basis of the employee's duties, responsibilities and salary.

218.201(3) *Academic administration.* Individuals engaged in the overall academic administration of an elementary or secondary school system include the superintendent or other head of the system and those assistants whose duties are primarily concerned with administration of matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program. In individual school establishments those engaged in academic administration include the principal, vice principals and department heads who are responsible for the operation of the school.

SOURCE: 29 CFR 541.201.

875—218.202 Reserved.

875—218.203(91D) Nonmanual work.

218.203(1) The requirement that the work performed by an exempt administrative employee must be office work or nonmanual work restricts the exemption to "white-collar" employees who meet the tests. If the work performed is "office" work, it is immaterial whether it is manual or nonmanual in nature. Persons employed in the routine operation of office machines are engaged in office work although they would not qualify as administrative employees.

218.203(2) Rule 218.2(91D) does not completely prohibit the performance of manual work by an "administrative" employee. The performance by an otherwise exempt administrative employee of some manual work which is directly and closely related to the work requiring the exercise of discretion and independent judgment is not inconsistent with the principle that the exemption is limited to "white-collar" employees. However, if the employee performs so much manual work (other than office work) that the employee cannot be said to be basically a "white-collar" employee, the employee does not qualify for exemption as a bona fide administrative employee, even if the manual work performed is directly and closely related to the work requiring the exercise of discretion and independent judgment. An office employee, on the other hand, is a "white-collar" worker, and would not lose the exemption on the grounds that the worker is not primarily engaged in "nonmanual" work, although the worker would lose the exemption if the worker failed to meet any of the other requirements.

SOURCE: 29 CFR 541.203.

875—218.204 Reserved.

875—218.205(91D) Directly related to management policies or general business operations.

218.205(1) The phrase "directly related to management policies or general business operations of the employer or the employer's customers" describes those types of activities relating to the administrative operations of a business as distinguished from "production" or, in a retail or service establishment, "sales" work. In addition to describing the types of activities, the phrase limits the exemption to persons who perform work of substantial importance to the management or operation of the business of the employer or the employer's customers.

218.205(2) The administrative operations of the business include the work performed by so-called "white-collar" employees engaged in "servicing" a business as, for example, advising the management, planning, negotiating, representing the company, purchasing, promoting sales, and business research and control. An employee performing work is engaged in activities relating to the administrative operations of the business notwithstanding that the employee is employed as an administrative assistant to an executive in the production department of the business.

218.205(3) As used to describe work of substantial importance to the management or operation of the business, the phrase "directly related to management policies or general business operations" is not limited to persons who participate in the formulation of management policies or in the operation of the business as a whole. Employees whose work is "directly related" to management policies or to general business operations include those whose work affects policy or whose responsibility it is to execute or carry it out. The phrase also includes a wide variety of persons who either carry out major assignments in conducting the operations of the business, or whose work affects business operations to a substantial degree, even though their assignments are tasks related to the operation of a particular segment of the business.

218.205(4) The "management policies or general business operations" may be those of the employer or the employer's customers. For example, many bona fide administrative employees perform important functions as advisers and consultants but are employed by a concern engaged in furnishing such services for a fee. Typical instances are tax experts, labor relations consultants, financial consultants, systems analysts, or resident buyers. Employees, if they meet the other requirements of rule 218.2(91D), qualify for exemption regardless of whether the management policies or general business operations to which their work is directly related are those of their employer's clients or customers or those of their employer.

SOURCE: 29 CFR 541.205.

875—218.206(91D) Primary duty.

218.206(1) The definition of "administrative" exempts only employees who are primarily engaged in the responsible work which is characteristic of employment in a bona fide administrative capacity. Thus, the employee must have as primary duty office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, or, in the case of "academic administrative personnel," the employee must have as primary duty work that is directly related to academic administration or general academic operations of the school in whose operations the employee is employed.

218.206(2) Reserved.

SOURCE: 29 CFR 541.206.

875—218.207(91D) Discretion and independent judgment.

218.207(1) In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term implies the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.

218.207(2) The term must be applied in the light of all the facts involved in the particular employment situation in which the question arises. It has been most frequently misunderstood and misapplied by employers and employees in cases involving the following:

a. Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures, or specific standards, and

b. Misapplication of the term to employees making decisions relating to matters of little consequence.

218.207(3) and **218.207(4)** Reserved.

218.207(5) Final decisions not necessary. The term "discretion and independent judgment" does not necessarily imply that the decisions made by the employee must have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment.

218.207(6) Reserved.

218.207(7) Customarily and regularly. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretion and independent judgment in the day-to-day performance of the employee's duties. The requirement is not met by the occasional exercise of discretion and independent judgment.

SOURCE: 29 CFR 541.207.

875—218.208 Reserved.

875—218.209(91D) Percentage limitations on nonexempt work.

218.209(1) An employee will not qualify for exemption as an administrative employee if the employee devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if the employee devotes as much as 40 percent, of the hours worked in the workweek to nonexempt work; that is, to activities which are not directly and closely related to the performance of the work described in 218.2(1) to 218.2(3).

218.209(2) This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

SOURCE: 29 CFR 541.209.

875—218.210(91D) Trainees, administrative. The exemption is applicable to an employee employed in a bona fide administrative capacity and does not include employees training for employment in an administrative capacity who are not actually performing the duties of an administrative employee.

SOURCE: 29 CFR 541.210.

875—218.211(91D) Amount of salary or fees required.

218.211(1) Except as otherwise noted in 218.211(3), compensation on a salary or fee basis at a rate of not less than $310 a week, exclusive of board, lodging or other facilities, is required for exemption as an administrative employee. The requirement will be met if the employee is compensated biweekly on a salary basis of $629, semimonthly on a salary basis of $671.68, or monthly on a salary basis of $1343.34.

218.211(2) Reserved.

218.211(3) In the case of academic administrative personnel, the compensation requirement for exemption as an administrative employee may be met either by the payment described in 218.211(1), or alternatively by compensation on a salary basis in an amount which is at least equal to the entrance salary for teachers in the school system, or educational establishment or institution by which the employee is employed.

218.211(4) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. These rules do not prohibit the sale of the facilities to administrative employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

SOURCE: 29 CFR 541.211.

875—218.212(91D) Salary basis. The explanation of the salary basis of payment made in rule 218.118(91D) in connection with the definition of "executive" is also applicable in the definition of "administrative."

SOURCE: 29 CFR 541.212.

875—218.213(91D) Fee basis. The requirements for exemption as an administrative employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis.

SOURCE: 29 CFR 541.213.

875—218.214(91D) Special proviso for high-salaried administrative employees.

218.214(1) Rule 218.2(91D) contains a special proviso including within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of not less than $500 per week exclusive of board, lodging, or other facilities and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, or the performance of functions in the administration of a school system, or education establishment or institution, or a department or subdivision thereof in work directly related to the academic instruction or training carried on therein, where the performance of the primary duty includes work requiring the exercise of discretion and independent judgment. This highly paid employee having the work as the employee's primary duty is deemed to meet all the requirements in subrules 218.2(1) to 218.2(5). If an employee qualifies for exemption under this proviso, it is not necessary to test the employee's qualifications in detail under subrules 218.2(1) to 218.2(5).

218.214(2) Reserved.

SOURCE: 29 CFR 541.214.

875—218.215(91D) Elementary or secondary schools and other educational establishments and institutions. To be considered for exemption as employed in the capacity of academic administrative personnel, the employment must be in connection with the operation of an elementary or secondary school system, an institution of higher education, or other educational establishment or institution. 875—subrules 215.3(5) and 215.3(21) define elementary and secondary schools as those day or residential schools which provide elementary or secondary education, as determined under Iowa law. Education above the secondary school level is included in the programs of institutions of higher education. Special schools for mentally or physically handicapped or gifted children are included among the educational establishments in which teachers and academic administrative personnel may qualify for the administrative exemption, regardless of any classification of such schools as elementary, secondary, or higher. Also, for purposes of the exemption, no distinction is drawn between public or private schools. Accordingly, the classification for other purposes of the school system, or educational establishment or institution, is ordinarily not a matter requiring consideration in a determination of whether the exemption applies. If the work is that of a teacher or academic personnel in an educational system, establishment, or institution, and if the other requirements are met, the level of instruction involved and the status of the school as public or private or operated for profit or not for profit will not alter the availability of the exemption.

SOURCE: 29 CFR 541.215.

875—218.216 to **218.300** Reserved.

BONA FIDE PROFESSIONAL CAPACITY

875—218.301(91D) General. The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions which have a recognized status and which are based on the acquirement of professional knowledge through prolonged study. It also includes the artistic professions, such as acting or music. Since the test of the bona fide professional capacity of employment is different in character from the test for persons in the learned professions, an alternative test for these employees is contained in these rules, in addition to the requirements common to both groups.

SOURCE: 29 CFR 541.301.

875—218.302(91D) Learned professions.

218.302(1) The "learned" professions are described in 218.3(1)*"a"* as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, or physical processes.

218.302(2) The knowledge must be of an advanced type. Thus, it must be knowledge which cannot be attained at the high school level.

218.302(3) The knowledge must be in a field of science or learning. This serves to distinguish the professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

218.302(4) The requisite knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction and study.

SOURCE: 29 CFR 541.302.

875—218.303(91D) Artistic professions.

218.303(1) The requirements concerning the character of the artistic type of professional work are contained in 218.3(1)*"b."* Work of this type is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.

218.303(2) The work must be "in a recognized field of artistic endeavor." This includes such fields as music, writing, the theater, and the plastic and graphic arts.

218.303(3) The work must be original and creative in character, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training.

218.303(4) Another requirement is that the employee be engaged in work "the result of which depends primarily on the invention, imagination, or talent of the employee."

SOURCE: 29 CFR 541.303.

875—218.304(91D) Primary duty.

218.304(1) For a general explanation of the term "primary duty" see the discussion of this term under "executive" in rule 218.103(91D). See also the discussion under "administrative" in rule 218.206(91D).

218.304(2) The "primary duty" of an employee as a teacher must be that of activity in the field of teaching. Mere certification by the state, or employment in a school will not suffice to qualify an individual for exemption within the scope of 218.3(1)*"c"* if the individual is not in fact both employed and engaged as a teacher. The words "primary duty" have the effect of placing major emphasis on the character of the employee's job as a whole. Therefore, employment and engagement in the activity of imparting knowledge as a primary duty shall be determinative with respect to employment within the meaning of the exemption as "teacher" in conjunction with the other requirements of rule 218.3(91D).

SOURCE: 29 CFR 541.304.

875—218.305(91D) Discretion and judgment.

218.305(1) Under rule 218.3(91D), a professional employee must perform work which requires the consistent exercise of discretion and judgment in its performance.

218.305(2) A prime characteristic of professional work is that the employee does apply the employee's special knowledge or talents with discretion and judgment. Purely mechanical or routine work is not professional.

SOURCE: 29 CFR 541.305.

875—218.306(91D) Predominantly intellectual and varied.

218.306(1) Rule 218.3(91D) requires that the employee be engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work.

218.306(2) and **218.306(3)** Reserved.

SOURCE: 29 CFR 541.306.

875—218.307(91D) Essential part of and necessarily incident to.

218.307(1) Subrule 218.3(4) has the effect of including within the exempt work activities which are an essential part of and necessarily incident to the professional work described in 218.3(1) to 218.3(3). This provision recognizes the fact that there are professional employees whose work necessarily involves some of the actual routine physical tasks also performed by obviously nonexempt employees.

218.307(2) The test of whether routine work is exempt work is different in the definition of "professional" from that in the definition of "executive" and "administrative." Thus, while routine work will be exempt if it is "directly and closely related" to the performance of executive or administrative duties, work which is directly and closely related to the performance of the professional duties will not be exempt unless it is also "an essential part of and necessarily incident to" the professional work.

218.307(3) Reserved.

SOURCE: 29 CFR 541.307.

875—218.308 Reserved.

875—218.309(91D) Twenty percent nonexempt work limitation. Time spent in nonexempt work, that is work which is not an essential part of and necessarily incident to the exempt work, is limited to 20 percent of the time worked by the employee in the workweek.

SOURCE: 29 CFR 541.309.

875—218.310(91D) Trainees, professional. The exemption applies to an employee employed in a bona fide professional capacity and does not include trainees who are not actually performing the duties of a professional employee.

SOURCE: 29 CFR 541.310.

875—218.311(91D) Amount of salary or fees required.

218.311(1) Except as otherwise noted in 218.311(3), compensation on a salary or fee basis at a rate of not less than $340 per week, exclusive of board, lodging or other facilities, is required for exemption as a "professional employee." An employee will meet this requirement if paid a biweekly salary of $680, a semimonthly salary of $736.66 or a monthly salary of $1473.34.

218.311(2) Reserved.

218.311(3) The payment of the compensation specified in 218.311(1) is not a requisite for exemption in the case of employees exempted from this requirement by the proviso to 218.3(5), as explained in rule 218.314(91D).

218.311(4) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. These rules do not prohibit the sale of the facilities to professional employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

SOURCE: 29 CFR 541.311.

875—218.312(91D) Salary basis. The salary basis of payment is explained in rule 218.118(91D) in connection with the definition of "executive."

SOURCE: 29 CFR 541.312.

875—218.313(91D) Fee basis.

218.313(1) The requirements for exemption as a professional (or administrative) employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis.

218.313(2) Reserved.

218.313(3) The adequacy of a fee payment. Whether the fee amounts to payment at a rate of not less than $340 per week to a professional employee or at a rate of not less than $310 per week to an administrative employee can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified, the amount paid to the employee will be tested by reference to a standard workweek of 40 hours. Thus, compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to at least $340 per week to a professional employee or at a rate of not less than $310 per week to an administrative employee if 40 hours were worked.

SOURCE: 29 CFR 541.313.

875—218.314(91D) Exception for physicians, lawyers, and teachers.

218.314(1) A holder of a valid license or certificate permitting the practice of law or medicine or any of their branches, who is actually engaged in practicing the profession, or a holder of the requisite academic degree for the general practice of medicine who is engaged in an internship or resident program pursuant to the practice of the employee's profession, or an employee employed and engaged as a teacher in the activity of imparting knowledge, is excepted from the salary or fee requirement. This exception applies only to the traditional professions of law, medicine, and teaching and not to employees in related professions which merely serve these professions.

218.314(2) and **218.314(3)** Reserved.

SOURCE: 29 CFR 541.314.

875—218.315(91D) Special proviso for high-salaried professional employees.

218.315(1) The definition of a "professional" contains a special proviso for employees who are compensated on a salary or fee basis at a rate of at least $500 per week exclusive of board, lodging, or other facilities. Under this proviso, the requirements for exemption in 218.3(1) to 218.3(5) will

be deemed to be met by an employee who receives the higher salary or fees and whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in the activity of imparting knowledge, which includes work requiring the consistent exercise of discretion and judgment, or consists of the performance of work requiring invention, imagination, or talent in a recognized field or artistic endeavor. Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test that employee's qualifications in detail under 218.3(1) to 218.3(5).

218.315(2) Reserved.

SOURCE: 29 CFR 541.315.

875—218.316 to **218.499** Reserved.

OUTSIDE SALESPERSON

875—218.500(91D) Definition of "outside salesperson." The term "outside salesperson" is defined in rule 218.5(91D).

SOURCE: 29 CFR 541.500.

875—218.501(91D) Making sales or obtaining orders.

218.501(1) Rule 218.5(91D) requires that the employee be engaged in:

a. Making sales within the meaning of 875—subrule 218.5(1), or

b. Obtaining orders or contracts for services or for the use of facilities.

218.501(2) Generally included are the transfer of title to tangible property and, in certain cases, of tangible and valuable evidences of intangible property. Sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of "sale" or "sell" which includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

218.501(3) The exempt work includes not only the sales of commodities, but also "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer." "Obtaining orders or... for the use of facilities" includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.

218.501(4) The word "services" extends the exemption as outside salespersons to employees who sell or take orders for a service, which is performed for the customer by someone other than the person taking the order. It includes the salesperson of a typewriter repair service who does not personally perform the repairing. It also includes otherwise exempt outside salespersons who obtain orders for the laundering of the customer's own linens as well as those who obtain orders for the rental of the laundry's linens.

218.501(5) The inclusion of the word "services" is not intended to exempt persons who, in a very loose sense, are sometimes described as selling "services." It does not include persons such as service persons even though they may sell the service which they themselves perform. Selling the service in these cases would be incidental to the servicing rather than the reverse. It does not include outside buyers, who in a very loose sense are sometimes described as selling their employer's "service" to the person from whom they obtain their goods. It is obvious that the relationship here is the reverse of that of salesperson-customer.

SOURCE: 29 CFR 541.501.

875—218.502(91D) Away from employer's place of business.

218.502(1) Reserved.

218.502(2) Characteristically the outside salesperson is one who makes sales at the customer's place of business. This is the reverse of sales made by mail or telephone (except where the telephone is used merely as an adjunct to personal calls). Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales must be construed as one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. An outside salesperson does not lose the exemption by displaying samples in hotel sample rooms as the salesperson travels from city to city; these sample rooms should not be considered as the employer's places of business.

SOURCE: 29 CFR 541.502.

875—218.503(91D) Incidental to and in conjunction with sales work. Work performed "incidental to and in conjunction with the employee's own outside sales or solicitation" includes not only incidental deliveries and collections which are specifically mentioned in 218.5(2), but also any other work performed by the employee in furthering the employee's own sales efforts. Work performed incidental to and in conjunction with the employee's own outside sales or solicitations would include, among other things, the writing of sales reports, the revision of the employee's own catalog, itinerary planning and attendance at sales conferences.

SOURCE: 29 CFR 541.503.

875—218.504(91D) Promotion work.

218.504(1) Promotion work is one type of activity often performed by persons who make sales, which may be exempt work depending upon the circumstances under which it is performed. Promotion employees are not exempt as "outside salespersons." (This discussion relates solely to the exemption under rule 218.5(91D) dealing with outside salespersons. Promotion employees who receive the required salary and otherwise qualify may be exempt as administrative employees.) However, any promotional work which is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is clearly exempt work. Promotional work which is incidental to sales made, or to be made, by someone else cannot be considered as exempt work.

218.504(2) Distribution through jobbers.

a. Typically, the problems presented involve distribution through jobbers (who employ their own salespersons) or through central warehouses of chain store organizations or cooperative retail buying associations. A manufacturer's representative in these cases visits the retailer, either alone or accompanied by the jobber's salesperson. In some instances, the manufacturer's representative may sell directly to the retailer. In others, the employee may urge the retailer to buy from the jobber.

b. This manufacturer's representative may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. These persons can be considered salespersons only if they are actually employed for the purpose of and are engaged in making sales or contracts. To the extent that they are engaged in promotional activities designed to stimulate sales which will be made by someone else, the work must be considered nonexempt. With these variations in the methods of selling and promoting sales each case must be decided upon its facts. In borderline cases the test is whether the person is actually engaged in activities directed toward the consummation of the employee's own sales, at least to the extent of obtaining a commitment to buy from the person to whom the employee is selling. If the employee's efforts are directed toward stimulating the sales of the company generally rather than the consummation of the employee's own specific sales, the employee's activities are not exempt. Incidental promotional activities may be tested by whether they are "performed incidental to and in conjunction with the employee's own outside sales or solicitations" or whether they are incidental to sales which will be made by someone else.

SOURCE: 29 CFR 541.504.

875—218.505(91D) Driver salespersons.

218.505(1) Where drivers who deliver to an employer's customers the products distributed by the employer also perform functions concerned with the selling of the products, and questions arise as to whether the employee is employed in the capacity of outside salesperson, all the facts bearing on the content of the job as a whole must be scrutinized to determine whether the employee is really employed for the purpose of making sales rather than for the service and delivery duties which the employee performs and, if so, whether the employee is customarily and regularly engaged in making sales and the employee's performance of nonexempt work is sufficiently limited to come within the tolerance permitted by rule 218.5(91D). The employee may qualify as an employee employed in the capacity of outside salesperson if, and only if, the facts clearly indicate that the employee is employed for the purpose of making sales and that the employee is customarily and regularly engaged in the activity within the meaning of the rules. As in the case of outside salespersons whose jobs do not involve delivery of products to customers, the employee's chief duty or primary function must be the making of sales or the taking of orders if the employee is to qualify under the definition in 218.5(91D). The employee must be a salesperson by occupation. If the employee is, all work that the employee performs which is actually incidental to and in conjunction with that employee's own sales effort is exempt work. All other work of the employee is nonexempt work. A determination of an employee's chief duty or primary function must be made in terms of the basic character of the job as a whole. All of the duties performed by an employee must be considered. The time devoted to the various duties is an important, but not necessarily controlling, element.

218.505(2) Reserved.

SOURCE: 29 CFR 541.505.

875—218.506(91D) Nonexempt work generally. Nonexempt work is that work which is not sales work and is not performed incidental to and in conjunction with the outside sales activities of the employee. It includes outside activities like meter reading, which are not part of the sales process. Inside sales and all work incidental thereto are also nonexempt work. So is clerical warehouse work which is not related to the employee's own sales. Similarly, the training of other salespersons is not exempt as outside sales work, with one exception. In some concerns it is the custom for the salesperson to be accompanied by the trainee while actually making sales. Under these circumstances, normally the trainer-salesperson and the trainee make the various sales jointly, and both normally receive a commission. In these instances, since both are engaged in making sales, the work of both is considered exempt work. However, the work of a helper who merely assists the salesperson in transporting goods or samples and who is not directly concerned with effectuating the sale is nonexempt work.

SOURCE: 29 CFR 541.506.

875—218.507(91D) Twenty percent limitation on nonexempt work. Nonexempt work in the definition of "outside salesperson" is limited to "20 percent of the hours worked in the workweek by nonexempt employees of the employer." The 20 percent is computed on the basis of the hours worked by nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside salesperson. If there are no employees of the employer performing this nonexempt work, the base to be taken is 40 hours a week, and the amount of nonexempt work allowed will be 8 hours a week.

SOURCE: 29 CFR 541.507.

875—218.508(91D) Trainees, outside salespersons. The exemption is applicable to an employee employed in the capacity of outside salesperson and does not include employees training to become outside salespersons who are not actually performing the duties of an outside salesperson.

SOURCE: 29 CFR 541.508.

875—218.509 to **218.599** Reserved.

SPECIAL PROBLEMS

875—218.600(91D) Combination exemptions.

218.600(1) These rules permit the "tacking" of exempt work under one rule to exempt work under another rule, so that a person who, for example, performs a combination of executive and professional work may qualify for exemption. In combination exemptions, however, the employee must meet the stricter of the requirements on salary and nonexempt work.

218.600(2) Reserved.

SOURCE: 29 CFR 541.600.

875—218.601(91D) Special provision for motion picture producing industry. Under rule 218.6(91D), the requirement that the employee be paid "on a salary basis" does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $500 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under rule 218.1(91D), 218.2(91D) or 218.3(91D) and who is employed at a base rate of at least $500 a week is exempt if the employee is paid at least pro rata (based on a week of not more than six days) for any week when the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances:

218.601(1) The employee is in a job category for which a weekly base rate is not provided and the employee's daily base rate would yield at least $500 if six days were worked; or

218.601(2) The employee is in a job category having a weekly base rate of at least $500 and the employee's daily base rate is at least one-sixth of such weekly base rate.

SOURCE: 29 CFR 541.601.

875—218.602(91D) Special proviso concerning executive and administrative employees in multistore retailing operations.

218.602(1) The tolerance of up to 40 percent of the employee's time which is allowed for nonexempt work performed by an executive or administrative employee of a retail or service establishment does not apply to employees of a multiunit retailing operation, such as a chain store system or a retail establishment having one or more branch stores, who perform central functions for the organization in physically separated establishments such as warehouses, central office buildings or other central service units or by traveling from store to store. Nor does this special tolerance apply to employees who perform central office, warehousing, or service functions in a multiunit retailing operation by reason of the fact that the space provided for such work is located in a portion or portions of the building in which the main retail or service establishment or another retail outlet of the organization is also situated. These employees are subject to the 20 percent limitation on nonexempt work.

218.602(2) With respect to executive or administrative employees stationed in the main store of a multistore retailing operation who engage in activities (other than central office functions) which relate to the operations of the main store, and also to the operations of one or more physically separated units, such as branch stores, of the same retailing operation, the division will, as an enforcement policy, assert no disqualification of the employee for the 875—subrule 215.4(1) exemption by reason of nonexempt activities if the employee devotes less than 40 percent of work time to nonexempt activities. This enforcement policy would apply, for example, in the case of a buyer who works in the main store of a multistore retailing operation and who not only manages the millinery department in the main store, but is also responsible for buying some or all of the merchandise sold in the millinery departments of the branch stores.

SOURCE: 29 CFR 541.602.

These rules are intended to implement Iowa Code chapter 91D.

[Filed emergency 11/8/89 after Notice 9/6/89—published 11/29/89, effective 1/1/90]

[Filed 11/2/94, Notice 6/22/94—published 11/23/94, effective 1/1/95]

CHAPTER 219
APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

[Prior to 11/4/98, see 347—Ch 219]

875—219.1 Reserved.

875—219.2(91D) Purpose and scope.

219.2(1) Reserved.

219.2(2) The minimum wage protection applies to employees employed as domestic service employees under either of the following circumstances:

a. If the employee's compensation for services from the employer would constitute wages, that is, if the compensation during a calendar year totaled $100 or more, or

b. If the employee was employed in such domestic service work by one or more employers for more than eight hours in the aggregate in any workweek. 875—subrule 215.4(14) provides a minimum wage exemption for "employees employed on a casual basis in domestic service employment to provide babysitting services" and for domestic service employees employed "to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves."

SOURCE: 29 CFR 552.2.

875—219.3(91D) Domestic service employment. Domestic service employment refers to services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom the employee is employed.

SOURCE: 29 CFR 552.3.

875—219.4(91D) Babysitting services. As an exemption, the term "babysitting services" means the custodial care and protection, during any part of the 24-hour day, of infants or children in or about the private home in which the infants or young children reside. The term "babysitting services" does not include services relating to the care and protection of infants or children which are performed by trained personnel, as registered, vocational, or practical nurses. While trained personnel do not qualify as babysitters, this fact does not remove them from the category of a covered domestic service employee when employed in or about a private household.

SOURCE: 29 CFR 552.4.

875—219.5(91D) Casual basis. As used in 875—subrule 215.4(14), the term "casual basis," when applied to babysitting services, means employment which is irregular or intermittent, and which is not performed by an individual whose vocation is babysitting. Casual babysitting services may include the performance of some household work not related to caring for the children, provided that the work is incidental, i.e., does not exceed 20 percent of the total hours worked on the particular babysitting assignment.

SOURCE: 29 CFR 552.5.

875—219.6(91D) Companionship services for the aged or infirm. As used in 875—subrule 215.4(14), the term "companionship services" means those services which provide fellowship, care, and protection for persons who, because of advanced age or physical or mental infirmity, cannot care for their own needs. The services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work, provided that such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked. The term "companionship services" does not include services

relating to the care and protection of the aged or infirm which require and are performed by trained personnel, as a registered or practical nurse. While trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.

SOURCE: 29 CFR 552.6.

875—219.7 to **219.99** Reserved.

875—219.100(91D) Application of minimum wage and overtime provisions.

219.100(1) Reserved.

219.100(2) Employers may take appropriate credit for the reasonable cost or fair value of food, lodging and other facilities customarily furnished to the employee by the employer such as drugs, cosmetics, dry cleaning, etc. Credit may be taken for the reasonable cost or fair value of these facilities only when the employee's acceptance of them is voluntary and uncoerced. Where uniforms are required by the employer, the cost of the uniforms and their care may not be included in the credit.

219.100(3) For enforcement purposes, the commissioner will accept a credit taken by the employer of $1.50 for breakfast (if furnished), $2 for lunch (if furnished), and $2.50 for dinner (if furnished), which meal credits do not exceed $6 a day. Nothing herein shall prevent employers from crediting themselves with the actual cost or fair value of furnishing meals, as determined in accordance with 875—Chapter 217, if the cost or fair value is different from the meal credits specified above, provided that employers keep, maintain and preserve (for a period of three years) the records on which they rely to justify such different cost figures.

219.100(4) In the case of lodging furnished to live-in domestic service employees, the commissioner will accept a credit taken by the employer of $30 a week. Nothing herein shall prevent employers from crediting themselves with the actual cost or fair value of furnishing lodging, as determined in accordance with 875—Chapter 217, if such cost or fair value is different from the amount specified above provided, however, that employers keep, maintain, and preserve (for a period of three years) the records on which they rely to justify such different cost figures.

SOURCE: 29 CFR 552.100.

875—219.101(91D) Domestic service employment.

219.101(1) and **219.101(2)** Reserved.

219.101(3) In determining the total hours worked, the employer must include all time the employee is required to be on the premises or on duty and all time the employee is suffered or permitted to work.

SOURCE: 29 CFR 552.101.

875—219.102(91D) Live-in domestic service employees.

219.102(1) Domestic service employees who reside in the household where they are employed are entitled to the same minimum wage as domestic service employees who work by the day. In determining the number of hours worked by a live-in worker, the employee and the employer may exclude, by agreement between themselves, the amount of sleeping time, mealtime and other periods of complete freedom from all duties when the employee may either leave the premises or stay on the premises for purely personal pursuits. For periods of free time (other than those relating to meals and sleeping) to be excluded from hours worked, the periods must be of sufficient duration to enable the employee to make effective use of the time. If the sleeping time, meal periods or other periods of free time are interrupted by a call to duty, the interruption must be counted as hours worked.

219.102(2) Where there is a reasonable agreement, as indicated in 219.102(1), the agreement may be used to establish the employee's hours of work in lieu of maintaining precise records of the hours actually worked. The employer shall keep a copy of the agreement and indicate that the employee's

work time generally coincides with the agreement. If it is found by the parties that there is a significant deviation from the initial agreement, a separate record should be kept for that period or a new agreement should be reached that reflects the actual facts.

SOURCE: 29 CFR 552.102.

875—219.103(91D) Babysitting services in general. Babysitting is a form of domestic service, and babysitters other than those working on a casual basis are entitled to the same benefits as other domestic service employees.

SOURCE: 29 CFR 552.103.

875—219.104(91D) Babysitting services performed on a casual basis.

219.104(1) Employees performing babysitting services on a casual basis are excluded from the minimum wage provisions.

219.104(2) Employment in babysitting services would usually be on a "casual basis," whether performed for one or more employers, if the employment by all employers does not exceed 20 hours per week in the aggregate. Employment in excess of these hours may still be on a "casual basis" if the excessive hours of employment are without regularity or are for irregular or intermittent periods. Employment in babysitting services shall also be deemed to be on a "casual basis" (regardless of the number of weekly hours worked by the babysitter) in the case of individuals whose vocations are not domestic service who accompany families for a vacation period to take care of the children if the duration of employment does not exceed six weeks.

219.104(3) If the individual performing babysitting services on a "casual basis" devotes more than 20 percent of the individual's time to household work during a babysitting assignment, the exemption for "babysitting services on a casual basis" does not apply during that assignment and the individual must be paid in accordance with the minimum wage requirement. This does not affect the application of the exemption for previous or subsequent babysitting assignments where the 20 percent tolerance is not exceeded.

219.104(4) Individuals who engage in babysitting as a full-time occupation are not employed on a "casual basis."

SOURCE: 29 CFR 552.104.

875—219.105(91D) Individuals performing babysitting services in their own homes.

219.105(1) The coverage of domestic service employees is limited to those persons who perform such services in or about the private household of the employer. Accordingly, if the services are performed away from the employer's permanent or temporary household, there is no coverage under the federal Fair Labor Standards Act, 29 U.S.C. 206(f).

219.105(2) An individual in a local neighborhood who takes four or five children into the individual's home, which is operated as a day care home, and who does not have more than one employee or whose only employees are members of that individual's immediate family is not covered by Iowa Code chapter 91D.

SOURCE: 29 CFR 552.105.

875—219.106(91D) Companionship services for the aged or infirm. Persons who provide care and protection for babies and young children, who are not physically or mentally infirm, are considered babysitters, not companions. The companion must perform the services with respect to the aged or infirm persons and not generally to other persons. The "casual" limitation does not apply to companion services.

SOURCE: 29 CFR 552.106.

875—219.107(91D) Yard maintenance workers. Persons who mow lawns and perform other yard work in a neighborhood community generally provide their own equipment, set their own work schedule and occasionally hire other individuals. These persons will be recognized as independent contractors who are not covered by Iowa Code section 91D.1 as domestic service employees. On the other hand, gardeners and groundskeepers employed primarily by one household are not usually independent contractors.

SOURCE: 29 CFR 552.107.

875—219.108 Reserved.

875—219.109(91D) Third-party employment.

219.109(1) Employees who are engaged in providing companionship services and who are employed by an employer or agency other than the family or household using their services, are exempt from the minimum wage requirement. Assigning an employee to more than one household or family in the same workweek would not defeat the exemption for that workweek, provided that the services rendered during each assignment come within the definition of companionship services.

219.109(2) Employees who are engaged in providing babysitting services and who are employed by an employer or agency other than the family or household using their services are not employed on a "casual basis" for purposes of the exemption. The employees are engaged in this occupation as a vocation.

SOURCE: 29 CFR 552.109.

875—219.110(91D) Record-keeping requirements.

219.110(1) Reserved.

219.110(2) In the case of an employee who resides on the premises, records of the actual hours worked are not required. Instead, the employer may maintain a copy of the agreement referred to in 219.102(91D). The more limited record-keeping requirement provided by this subrule does not apply to third-party employers. No records are required for casual babysitters.

219.110(3) Where a domestic service employee works on a fixed schedule, the employer may use a schedule of daily and weekly hours that the employee normally works and either the employer or the employee may:

a. Indicate by check marks, statement or other method that such hours were actually worked, and

b. When more or less than the scheduled hours are worked, show the exact number of hours worked.

219.110(4) The employer may require the domestic service employee to record the hours worked and submit such record to the employer.

SOURCE: 29 CFR 552.110.

These rules are intended to implement Iowa Code chapter 91D.

[Filed emergency 11/8/89 after Notice 9/6/89—published 11/29/89, effective 1/1/90]

[Filed 11/2/94, Notice 6/22/94—published 11/23/94, effective 1/1/95]

CHAPTER 220
APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

[Prior to 11/4/98, see 347—Ch 220]

875—220.1(91D) Definitions.

220.1(1) and **220.1(2)** Reserved.

220.1(3) *"Public agency"* means the state of Iowa, or political subdivision of the state.

SOURCE: 29 CFR 553.1.

875—220.2(91D) Purpose and scope.

220.2(1) Reserved.

220.2(2) Rules 220.3(91D) to 220.51(91D) interpret and apply the special provisions that are generally applicable to all covered and nonexempt employees of state and local governments. The rules also contain provisions concerning certain individuals (i.e., elected officials, their appointees, and legislative branch employees) who are excluded from the definition of "employee" and thus from coverage. These rules also interpret and apply the federal Fair Labor Standards Act, 29 U.S.C. 207(o), 29 U.S.C. 207(p)(2), 29 U.S.C. 207(p)(3), and 29 U.S.C. 211(c) regarding compensatory time off, occasional or sporadic part-time employment, and the performance of substitute work by public agency employees, respectively.

220.2(3) Rules 220.100(91D) to 220.106(91D) deal with "volunteer" services performed by individuals for public agencies. Rules 220.200(91D) to 220.233(91D) apply various provisions as they relate to fire protection and law enforcement employees of public agencies.

SOURCE: 29 CFR 553.2.

875—220.3 to **220.10** Reserved.

875—220.11(91D) Exclusion for elected officials and their appointees.

220.11(1) Subrules 215.3(7)*"a"* and 215.3(7)*"b"*(1) to (5) of [875] provide an exclusion from the coverage for officials elected by the voters of their jurisdictions. Also excluded under this provision are personal staff members and officials in policy-making positions who are selected or appointed by the elected public officials and certain advisers to such officials.

220.11(2) The statutory term "member of personal staff" generally includes only persons who are under the direct supervision of the selecting elected official and have regular contact with the official. The term typically does not include individuals who are directly supervised by someone other than the elected official even though they may have been selected by the official.

220.11(3) In order to qualify as personal staff members or officials in policy-making positions, the individuals in question must not be subject to the civil service laws of their employing agencies. The term "civil service laws" refers to a personnel system established by law which is designed to protect employees from arbitrary action, personal favoritism, and political coercion, and which uses a competitive or merit examination process for selection and placement. Continued tenure of employment of employees under civil service, except for cause, is provided. In addition, personal staff members must be appointed by, and serve solely at the pleasure or discretion of, the elected official.

220.11(4) The exclusion for "immediate adviser" to elected officials is limited to staff who serve as advisers on constitutional or legal matters, and who are not subject to the civil service rules of their employing agency.

SOURCE: 29 CFR 553.11.

875—220.12(91D) Exclusion for employees of legislative branches.

220.12(1) Subrules 215.3(7)*"a"* and 215.3(7)*"b"*(1) to (5) of [875] provide an exclusion from the definition of the term "employee" for individuals who are not subject to the civil service laws of their employing agencies and are employed by legislative branches or bodies of the state and its political subdivisions.

220.12(2) Employees of the state or local legislative libraries do not come within this statutory exclusion. Also, employees of school boards, other than elected officials and their appointees (as discussed in rule 220.11(91D)), do not come within this exclusion.

SOURCE: 29 CFR 553.12.

875—220.13 to **220.19** Reserved.

875—220.20(91D) Introduction. A public agency which is the state or a political subdivision of the state is authorized to provide compensatory time off (with certain limitations, as provided in rule 220.21(91D)) in lieu of monetary overtime compensation.

SOURCE: 29 CFR 553.20.

875—220.21(91D) Compensatory time and compensatory time off. The terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

SOURCE: 29 CFR 553.21.

875—220.22 to **220.26** Reserved.

875—220.27(91D) Payments for unused compensatory time.

220.27(1) Payments for accrued compensatory time may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

220.27(2) Upon termination of employment, an employee shall be paid for unused compensatory time at a rate of compensation not less than:

a. The average regular rate received by the employee during the last three years of the employee's employment, or

b. The final regular rate received by the employee, whichever is higher.

220.27(3) The phrase "last three years of employment" means the three-year period immediately prior to termination. Where an employee's last three years of employment are not continuous because of a break in service, the period of employment after the break in service will be treated as new employment. However, a break in service must have been intended to be permanent and any accrued compensatory time must have been cashed out at the time of initial separation. Where the final period of employment is less than three years, the average rate still must be calculated based on the rate(s) in effect during the period.

220.27(4) The term "regular rate" is defined in 29 CFR 778.108.

SOURCE: 29 CFR 553.27.

875—220.28(91D) Other compensatory time.

220.28(1) Compensatory time which is earned and accrued by an employee for employment in excess of a nonstatutory requirement is considered "other" compensatory time. The term "other" compensatory time off means hours during which an employee is not working and which are not counted as hours worked during the period when used.

220.28(2) and **220.28(3)** Reserved.

220.28(4) The rate at which "other" compensatory time is earned is not required to be at a rate of one and one-half hours for each hour of employment. The rate at which "other" compensatory time is earned may be some lesser or greater multiple of the rate or the straight-time rate itself.

SOURCE: 29 CFR 553.28.

875—220.29 Reserved.

OTHER EXEMPTIONS

875—220.30 Reserved.

875—220.31(91D) Substitution—federal Fair Labor Standards Act, 29 U.S.C. 207(p)(3).

220.31(1) Individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. Where one employee substitutes for another, each employee will be credited as if the employee had worked the normal work schedule for that shift.

220.31(2) An employee's decision to substitute will be considered to have been made at the employee's sole option when it has been made *(a)* without fear of reprisal or promise of reward by the employer, and *(b)* exclusively for the employee's own convenience.

SOURCE: 29 CFR 553.31.

875—220.32 to **220.49** Reserved.

RECORD KEEPING

875—220.50(91D) Records to be kept of compensatory time. For each employee subject to the compensatory time and compensatory time off provisions of the federal Fair Labor Standards Act, 29 U.S.C. 207(o), a public agency shall maintain and preserve records containing the basic information and data required by rule 875—216.2(91D) and:

220.50(1) The number of hours of compensatory time earned pursuant to the federal Fair Labor Standards Act, 29 U.S.C. 207(o), each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;

220.50(2) The number of hours of compensatory time used each workweek, or other applicable work period, by each employee;

220.50(3) The number of hours of compensatory time compensated in cash, the total amount paid and the date of payment; and

220.50(4) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If the agreement or understanding is not in writing, a record of its existence must be kept.

SOURCE: 29 CFR 553.50.

875—220.51 to **220.99** Reserved.

VOLUNTEERS

875—220.100(91D) General. Individuals performing volunteer services for units of the state and local governments will not be regarded as "employees."

SOURCE: 29 CFR 553.100.

875—220.101(91D) "Volunteer" defined.

220.101(1) An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer. Individuals performing hours of service for a public agency will be considered volunteers for the time so spent and not subject to the minimum wage requirement when the hours of service are performed in accord with 875—subparagraphs 215.3(8)*"b"*(1) and (2) and the guidelines in rules 220.100(91D) to 220.106(91D).

220.101(2) Reserved.

220.101(3) Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

220.101(4) An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

SOURCE: 29 CFR 553.101.

875—220.102(91D) Employment by the same public agency.

220.102(1) Subparagraph 215.3(8)*"b"*(2) of [875] does not permit an individual to perform hours of volunteer service for a public agency when the hours involve the same type of services which the individual is employed to perform for the same public agency.

220.102(2) Whether two agencies of the same state or local government constitute the same public agency can only be determined on a case-by-case basis. One factor that would support a conclusion that two agencies are separate is whether they are treated separately for statistical purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce.

SOURCE: 29 CFR 553.102.

875—220.103(91D) "Same type of services" defined.

220.103(1) Employees may volunteer their services in one capacity or another without contemplation of pay for services rendered. The phrase "same type of services" means similar or identical services. In general, the duties and other factors contained in the definitions of the three-digit categories of occupations in the Dictionary of Occupational Titles will be followed in determining whether the volunteer activities constitute the "same type of services" as the employment activities. Equally important in the determination will be the consideration of all the facts and circumstances in a particular case, including whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee.

220.103(2) Reserved.

SOURCE: 29 CFR 553.103.

875—220.104(91D) Private individuals who volunteer services to public agencies.

220.104(1) Individuals who are not employed in any capacity by state or local government agencies often donate hours of service to a public agency for civic or humanitarian reasons. These individuals are considered volunteers and not employees of such public agencies if their hours of service are provided with no promise, expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees, or a combination thereof, as discussed in rule 220.106(91D). There are no limitations or restrictions imposed on the types of services which private individuals may volunteer to perform for public agencies.

220.104(2) Reserved.

SOURCE: 29 CFR 553.104.

875—220.105(91D) Mutual aid agreements. An agreement between the state and another state or between two or more political subdivisions for mutual aid does not change the otherwise volunteer character of services performed by employees of such agencies pursuant to said agreement.

SOURCE: 29 CFR 553.105.

875—220.106(91D) Payment of expenses, benefits, or fees.

220.106(1) Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.

220.106(2) An individual who performs hours of service as a volunteer for a public agency may receive payment for expenses without being deemed an employee for purposes of these rules. Individuals would not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services, for example, payment for the cost of meals and transportation expenses.

220.106(3) Individuals do not lose their status as volunteers because they are reimbursed for tuition, transportation and meal costs involved in their attending classes intended to teach them to perform efficiently the services they provide or will provide as volunteers. Likewise, the volunteer status of individuals is not lost if they are provided books, supplies, or other materials essential to their volunteer training or reimbursement for the cost thereof.

220.106(4) Individuals do not lose their volunteer status if they are provided reasonable benefits by a public agency for whom they perform volunteer services. Benefits would be considered reasonable, for example, when they involve inclusion of individual volunteers in group insurance plans (such as liability, health, life, disability, workers' compensation) or pension plans or "length of service" awards, commonly or traditionally provided to volunteers of government agencies, which meet the additional test in 220.106(6).

220.106(5) Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. A nominal fee is not a substitute for compensation and shall not be tied to productivity. However, this does not preclude the payment of a nominal amount on a "per call" or similar basis to volunteer firefighters. The following factors will be among those examined in determining whether a given amount is nominal:

a. The distance traveled and the time and effort expended by the volunteer;

b. Whether the volunteer has agreed to be available around the clock or only during certain specified time periods; and

c. Whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

220.106(6) Whether the furnishing of expenses, benefits, or fees would result in individuals' losing their status as volunteers can only be determined by examining the total amount of payments made (expenses, benefits, fees) in the context of the economic realities of the particular situation.

SOURCE: 29 CFR 553.106.

875—220.107 to **220.199** Reserved.

FIRE PROTECTION AND LAW ENFORCEMENT
EMPLOYEES OF PUBLIC AGENCIES

875—220.200 to **220.220** Reserved.

875—220.221(91D) Compensable hours of work.

220.221(1) Reserved.

220.221(2) Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during

which the employee is suffered or permitted to work for the employer. The time includes all preshift and postshift activities which are an integral part of the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and reracking fire hoses.

220.221(3) Time spent away from the employer's premises under conditions that are so circumscribed that they restrict the employee from effectively using the time for personal pursuits also constitutes compensable hours of work.

220.221(4) An employee who is not required to remain on the employer's premises but is merely required to leave word at home or with company officials where the employee may be reached is not working while on call. Time spent at home on call may be compensable depending on whether the restrictions placed on the employee preclude using the time for personal pursuits. Where the conditions placed on the employee's activities are so restrictive that the employee cannot use the time effectively for personal pursuits, such time spent on call is compensable.

220.221(5) Normal home to work travel is not compensable, even where the employee is expected to report to work at a location away from the location of the employer's premises.

220.221(6) A police officer, who has completed the tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time even where the radio must be left on so that the officer can respond to emergency calls. The time spent in responding to such calls is compensable.

220.221(7) The fact that employees cannot return home after work does not necessarily mean that they continue on duty after their shift.

SOURCE: 29 CFR 553.221.

875—220.222(91D) Sleep time.

220.222(1) Reserved.

220.222(2) Sleep time cannot be excluded from the compensable hours of work where:

a. The employee is on a tour of duty of less than 24 hours, and

b. Where the employee is on a tour of duty of exactly 24 hours.

220.222(3) Sleep time can be excluded from compensable hours of work, however, in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude the time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least 5 hours), the entire time must be counted as hours of work.

SOURCE: 29 CFR 553.222.

875—220.223(91D) Meal time.

220.223(1) If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with the federal Fair Labor Standards Act, 29 U.S.C. 207(a)(1), the public agency may exclude meal time from hours worked if all the tests in 29 CFR 785.19 are met.

220.223(2) If a public agency elects to use the federal Fair Labor Standards Act, 29 U.S.C. 207(f) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the employee is completely relieved from duty during the meal period and all the other tests in 29 CFR 785.19 are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., "stakeouts"), they are not considered to be completely relieved from duty, and any meal periods would be compensable.

220.223(3) Where the public agency elects to use the federal Fair Labor Standards Act, 29 U.S.C. 207(k), exemption for firefighters, meal time cannot be excluded from the compensable hours of work where:

a. The firefighter is on a tour of duty of less than 24 hours, and

b. Where the firefighter is on a tour of duty of exactly 24 hours.

220.223(4) In the case of police officers or firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the tests in 29 CFR 785.19 and 785.22 are met.

SOURCE: 29 CFR 553.223.

875—220.224 Reserved.

875—220.225(91D) Early relief. It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under federal Fair Labor Standards Act, 29 U.S.C. 207(k), where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. Alternatively, if the practice is required by the employer, the time involved must be added to the employee's tour of duty and treated as compensable hours of work.

SOURCE: 29 CFR 553.225.

875—220.226(91D) Training time.

220.226(1) The general rules for determining the compensability of training time under the federal Fair Labor Standards Act are set forth in 29 CFR 785.27 through 785.32.

220.226(2) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of governments in required training is considered to be noncompensable:

a. Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

b. Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government, does not constitute compensable hours of work.

c. Time spent in the training described in 220.226(1)*"a"* or *"b"* is not compensable, even if all or part of the cost of the training is borne by the employer.

220.226(3) Police officers or firefighters, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. The free time is not compensable.

SOURCE: 29 CFR 553.226.

875—220.227 to **220.233** Reserved.

These rules are intended to implement Iowa Code chapter 91D.

[Filed emergency 11/8/89 after Notice 9/6/89—published 11/29/89, effective 1/1/90]

[Filed 11/2/94, Notice 6/22/94—published 11/23/94, effective 1/1/95]

CHAPTER 221
Reserved