

PAROLE BOARD[205]

Rules transferred from agency number 615 to 205 to conform with the reorganization numbering scheme in general.

CHAPTER 1

ORGANIZATION AND GENERAL ADMINISTRATION

- 1.1(904A) Board description
- 1.2(904A) Board responsibilities
- 1.3(904A) Business location and hours
- 1.4(904A) Board meetings

CHAPTER 2

AGENCY PROCEDURE FOR RULE MAKING

(Uniform Rules)

- 2.3(17A) Public rule-making docket
- 2.5(17A) Public participation
- 2.6(17A) Regulatory analysis
- 2.11(17A) Concise statement of reasons

CHAPTER 3

PETITIONS FOR RULE MAKING

(Uniform Rules)

- 3.1(17A) Petition for rule making
- 3.3(17A) Inquiries

CHAPTER 4

DECLARATORY ORDERS

(Uniform Rules)

- 4.1(17A) Petition for declaratory order
- 4.2(17A) Notice of petition
- 4.3(17A) Intervention
- 4.4(17A) Briefs
- 4.5(17A) Inquiries
- 4.6(17A) Service and filing of petitions and other papers
- 4.7(17A) Consideration
- 4.8(17A) Action on petition
- 4.9(17A) Refusal to issue order
- 4.12(17A) Effect of a declaratory order

CHAPTER 5

FAIR INFORMATION PRACTICES

(Uniform Rules)

- 5.1(17A,22) Definitions
- 5.2(17A,22) Statement of policy
- 5.3(17A,22) Requests for access to records
- 5.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination
- 5.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records
- 5.7(17A,22) Consensual disclosure of confidential records
- 5.9(17A,22) Routine use
- 5.10(17A,22) Disclosures without the consent of the subject
- 5.11(17A,22) Release to subject
- 5.12(17A,22) Availability of records
- 5.13(17A,22) Personally identifiable information

- 5.14(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes
- 5.15(17A,22) Applicability

CHAPTER 6

PUBLIC COMMUNICATIONS AND RECORDS

- 6.1(22) General
- 6.2(22) Communications from persons other than victims
- 6.3(22) Examination of board records
- 6.4(904) Disclosure of information regarding inmates and parolees
- 6.5(904A) Inmate requests regarding risk assessment score

CHAPTER 7

VICTIM NOTIFICATION

- 7.1(915) Definitions
- 7.2(915) Victim registration
- 7.3(915) Victim notification
- 7.4(915) Notification of decision
- 7.5(915) Written opinions concerning release
- 7.6(915) Appearances at parole interviews
- 7.7(915) Disclosure of victim information

CHAPTER 8

PAROLE AND WORK RELEASE CONSIDERATIONS

- 8.1(906) Purpose of parole and work release considerations
- 8.2(906) Parole and work release eligibility
- 8.3 Reserved
- 8.4(906) Prior forcible felony mandatory minimum sentence
- 8.5(904A) Risk assessment
- 8.6(906) Parole and work release considerations
- 8.7(906) Parole and work release information
- 8.8(906) Interview notice
- 8.9(906) Continuance
- 8.10(906) Factors considered in parole and work release decisions
- 8.11(906) Information disclosure to inmate
- 8.12(906) Interview procedure
- 8.13(906) Case review procedure
- 8.14(906) Conduct at parole proceedings
- 8.15(906) Parole and work release decisions
- 8.16(906) Notice of parole and work release decisions
- 8.17(906) Parole authorized following work release

CHAPTER 9

CERTIFICATES OF EMPLOYABILITY

- 9.1(906) Definitions
- 9.2(906) Certificates of employability
- 9.3(906) Issuance of a certificate of employability
- 9.4(906) Certificate not to be deemed a pardon

CHAPTER 10
PAROLE AND WORK RELEASE SUPERVISION

- 10.1(906) Release processing
- 10.2(906) Parole supervision
- 10.3(906) Parole or work release agreement

CHAPTER 11
PAROLE REVOCATION

- 11.1(906) Voluntary termination of parole
- 11.2(908) Work release day reporting revocation
- 11.3(908) Revocation initiated
- 11.4(908) Revocation of parole
- 11.5(908) Parole violations
- 11.6(908) Parole violation report
- 11.7(908) Parole revocation hearing
- 11.8(908) Appeal or review
- 11.9(908) Interstate compact parole revocation probable cause hearings
- 11.10(908) Parolee convicted of new offenses
- 11.11(908) Waivers
- 11.12(908) Conviction of a felony or aggravated misdemeanor while on parole

CHAPTER 12
Reserved

CHAPTER 13
PAROLE DISCHARGE

- 13.1(906) Discharge from parole supervision
- 13.2(906) Persons not eligible

CHAPTER 14
EXECUTIVE CLEMENCY

- 14.1(902) Interviews of inmates serving life terms
- 14.2(902) Review of inmates serving life terms
- 14.3(914) Executive clemency applications
- 14.4(914,902) Board investigation
- 14.5(914,902) Executive clemency recommendations
- 14.6(902) Commutation procedure for Class "A" felons

CHAPTER 15
APPEAL OF DECISIONS

- 15.1(17A) General
- 15.2(17A) Grounds
- 15.3(17A) Filing an appeal
- 15.4(17A) Board review and decision
- 15.5(17A) Other appearances before the board
- 15.6(21) Electronic appearances

CHAPTER 16
WAIVER AND VARIANCE RULES

- 16.1(17A) Definition
- 16.2(17A) Scope
- 16.3(17A) Applicability
- 16.4(17A) Criteria for waiver or variance
- 16.5(17A) Filing of petition

16.6(17A)	Content of petition
16.7(17A)	Additional information
16.8(17A)	Notice
16.9(17A)	Hearing procedures
16.10(17A)	Ruling
16.11(17A)	Public availability
16.12(17A)	Summary reports
16.13(17A)	Cancellation of a waiver
16.14(17A)	Violations
16.15(17A)	Defense
16.16(17A)	Judicial review

CHAPTER 1
ORGANIZATION AND GENERAL ADMINISTRATION

[Prior to 2/22/89, Parole, Board of[615] Chs 1 and 2]

205—1.1(904A) Board description.

1.1(1) The board of parole is established by Iowa Code chapter 904A and consists of five members, including a chairperson.

1.1(2) Board members are appointed by the governor for staggered terms of four years and are subject to confirmation by the senate.

1.1(3) The board is responsible directly to the governor and is attached to the department of corrections for the purpose of receiving routine administrative and support services.

1.1(4) The board chairperson is appointed by the governor and serves at the pleasure of the governor.

1.1(5) Vacancies in the board are filled in the same manner as regular appointments. Appointees who fill vacancies serve for the balance of the term.

1.1(6) As used in the rules of the Iowa board of parole, the term “board” shall mean the Iowa board of parole.

205—1.2(904A) Board responsibilities. The statutory responsibilities of the board are:

1.2(1) Reviewing and interviewing inmates for parole or work release, and granting parole or work release.

1.2(2) Interviewing inmates according to board of parole administrative rules.

1.2(3) Gathering and reviewing information regarding new parole and work release programs being instituted or considered nationwide, and determining which programs may be useful to Iowa. Reviewing the current parole and work release programs and procedures used in Iowa on an annual basis.

1.2(4) Increasing the utilization of data processing and computerization to assist in the orderly conduct of the parole and work release system.

1.2(5) Conducting such studies of the parole and work release system as the governor and general assembly shall request.

1.2(6) Providing, to public and private entities, technical assistance and counseling related to the board’s purposes.

1.2(7) Reviewing and making recommendations to the governor regarding all applications for reprieve, pardon, commutation of sentence, remission of a fine or forfeiture, and restoration of citizenship rights.

1.2(8) Maintaining a risk assessment program which shall provide risk analysis for the board.

205—1.3(904A) Business location and hours. The board’s business office address is Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319; telephone (515)725-5757. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

205—1.4(904A) Board meetings.

1.4(1) The board may conduct the following meetings:

a. Business meeting. The board may meet each month to consider rules, procedure and other matters.

b. Public hearing. The board may conduct a public hearing to solicit input and comment on parole and work release procedures.

c. Board session. The board shall be in session each month at any location designated by the chairperson. A board session may include:

- (1) Parole and work release case reviews;
- (2) Parole and work release interviews;
- (3) Parole rescission hearings;
- (4) Parole discharge reviews;
- (5) Executive clemency reviews.

1.4(2) Quorum.

- a. A majority of the members of the board constitutes a quorum except as provided herein.
- b. The chairperson shall designate panels composed of at least three board members to conduct board sessions except as provided herein.

1.4(3) Majority vote. All questions shall be decided by a majority vote of the members except as provided herein.

1.4(4) Parliamentary authority. Robert's Rules of Order, current edition, shall govern the conduct of all business meetings of the board except as provided herein.

1.4(5) Minutes. The board shall keep copies of the minutes of board meetings on file at the business office. The list of individuals considered by the board for action shall constitute the minutes of a board session.

1.4(6) Public notice and agenda. The board shall establish the date, time, and location of all meetings. The board shall give public notice of all meetings pursuant to Iowa Code chapter 21. The board shall mail copies of, or provide by electronic means, notices of public meetings and tentative agenda to news media that have so requested. When it is determined that an emergency meeting is required, the board shall notify the news media as soon as the need for an emergency meeting has been decided. The nature of the emergency shall be stated in the minutes.

1.4(7) Public access to meetings. Members of the public have access to board meetings as provided in Iowa Code chapter 21. Persons wishing to appear before the board shall submit their requests to the business office not less than three days prior to the business meeting. Members of the public wishing to attend board meetings conducted in department of corrections penal institutions should consult, in advance, department of corrections administrative rules relating to visitation and public access.

1.4(8) Electronic meetings. The board may conduct a meeting by electronic means as provided in Iowa Code section 21.8.

These rules are intended to implement Iowa Code chapter 904A.

[Filed 7/26/76, Notice 1/26/76—published 8/9/76, effective 9/13/76]

[Filed 2/7/79, Notices 10/4/78, 11/1/78—published 3/7/79, effective 4/11/79]

[Filed 11/17/81, Notice 8/5/81—published 12/9/81, effective 1/14/82]

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

[Filed 9/21/06, Notice 7/5/06—published 10/11/06, effective 11/15/06]

CHAPTER 2
AGENCY PROCEDURE FOR RULE MAKING

The board of parole hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code with the following amendments:

205—2.3(17A) Public rule-making docket.

2.3(2) *Anticipated rule making.* In lieu of the words “(commission, board, council, director)”, insert “board of parole”.

205—2.5(17A) Public participation.

2.5(1) *Written comments.* In lieu of the words “(identify office and address)”, insert “Executive Director of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

205—2.6(17A) Regulatory analysis.

2.6(2) *Mailing list.* In lieu of the words “(designate office)”, insert “Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

205—2.11(17A) Concise statement of reasons.

2.11(1) *General.* In lieu of the words “(specify the office and address)”, insert “the executive director of the board of parole”.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

[Filed 9/21/06, Notice 7/5/06—published 10/11/06, effective 11/15/06]

CHAPTER 3
PETITIONS FOR RULE MAKING

The board of parole hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code with the following amendments:

205—3.1(17A) Petition for rule making. In lieu of the words “(designate office)”, the text should read “Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read “BEFORE THE BOARD OF PAROLE OF THE STATE OF IOWA”.

205—3.3(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, the text should read “the Executive Director of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

[Filed 9/21/06, Notice 7/5/06—published 10/11/06, effective 11/15/06]

CHAPTER 4
DECLARATORY ORDERS

The board of parole hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code with the following amendments:

205—4.1(17A) Petition for declaratory order. In lieu of the words “(designate agency)”, the text should read “board of parole”. In lieu of the words “(designate office)”, the text should read “Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read “BEFORE THE BOARD OF PAROLE OF THE STATE OF IOWA”.

205—4.2(17A) Notice of petition. In lieu of the words “(designate agency)”, the text should read “board of parole”.

205—4.3(17A) Intervention.

4.3(1) In lieu of the word “days”, the text should read “20 days”.

4.3(2) In lieu of the words “(designate agency)”, the text should read “the board of parole”.

4.3(3) In lieu of the words “(designate office)”, the text should read “Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”. In lieu of the words “(designate agency)”, the text should read “board of parole”. In lieu of the words “(AGENCY NAME)”, the text should read “BEFORE THE BOARD OF PAROLE OF THE STATE OF IOWA”.

205—4.4(17A) Briefs. In lieu of the words “(designate agency)”, the text should read “board of parole”.

205—4.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, the text should read “the Executive Director of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”.

205—4.6(17A) Service and filing of petitions and other papers.

4.6(2) Filing—when required. In lieu of the words “(specify office and address)”, the text should read “Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319”. In lieu of the words “(agency name)”, the text should read “board of parole”.

4.6(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 in the contested cases segment of the Uniform Rules on Agency Procedure.

205—4.7(17A) Consideration. In lieu of the words “(designate agency)”, the text should read “board of parole”.

205—4.8(17A) Action on petition.

4.8(1) In lieu of the words “(designate agency head)”, the text should read “chairperson of the board of parole”.

4.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in the contested cases segment of the Uniform Rules on Agency Procedure.

205—4.9(17A) Refusal to issue order. In lieu of the words “(designate agency)”, the text should read “board of parole”.

205—4.12(17A) Effect of a declaratory order. In lieu of the words “(designate agency)”, the text should read “board of parole”.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]
[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]
[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]
[Filed 9/21/06, Notice 7/5/06—published 10/11/06, effective 11/15/06]

CHAPTER 5
FAIR INFORMATION PRACTICES

[Prior to 2/22/89, Parole, Board of[615] Ch 14; see also 205—Ch 6]

The board of parole hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices which are printed in the first volume of the Iowa Administrative Code.

205—5.1(17A,22) Definitions. As used in this chapter:

“Agency” means the board of parole.

“Confidential records” means records, as defined under Iowa Code sections 22.7, 22.8, 904.601, 904.602 and 904.603, which are not disclosed to members of the public except by court order. This includes records which the board is prohibited by law from making available for inspection by members of the public and those exempt records which the board has determined not to disclose to members of the public.

“Open records” means those records which are not authorized or required to be kept confidential under Iowa Code section 22.7, 22.8, 904.601, or 904.602 or any other provision of the law.

205—5.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22. Agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

205—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. A request for access to a record should be directed to the office where the record is kept. Records of current inmates, work releasees and parolees are maintained in the office of the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, Des Moines, Iowa 50319; telephone (515)725-5757.

5.3(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 legal holidays.

5.3(3) Request for access. Requests for access to records may be made in writing, in person, or by telephone if the request is for open record information. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail 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.

5.3(4) Response to requests. The custodian is authorized to grant or deny access to the record according to the provisions of Iowa Code chapter 22, Iowa Code sections 904.601, 904.602, and 904.603 and this chapter. The decision to grant or deny access may be delegated to one or more designated employees. Unless the size or nature of the request requires time for compliance, the agency shall comply with the request as soon as practicable. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4) or for good cause. The agency shall promptly inform the requester of the reason for the delay. A request to review a confidential record shall be in writing and shall enumerate the specific grounds justifying access to the confidential record and shall provide any proof necessary to establish relevant facts prior to receiving access to the record.

5.3(7) Fees.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of five

minutes. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

205—5.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.

5.5(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 placed in the agency's public file in lieu of the original record. If the agency subsequently receives a request for access to the original record, the agency will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record.

205—5.6(17A,22) 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 the subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the Board of Parole, Jessie Parker Building, 510 East Twelfth Street, 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 the requester, and shall include the current address and telephone number of the requester or the requester's representative.

205—5.7(17A,22) Consensual disclosure of confidential records.

5.7(1) Consent to disclose by a subject individual. To the extent allowed by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.4(17A,22).

5.7(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 agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

5.7(3) Obtaining information from a third party. The board is required to obtain information to assist in making decisions regarding classification, programming, security and administrative management. Requests to third parties for this information may involve the release of confidential information about individuals. Except as provided by law, the board may make these requests only when the individual has authorized the release.

205—5.9(17A,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of all agency records:

5.9(1) Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

5.9(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.

5.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

5.9(4) Transfers of information within the agency, to other state agencies, or to units of local government as appropriate to administer the program for which the information is collected.

5.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

5.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

205—5.10(17A,22) Disclosures without the consent of the subject.

5.10(1) Open records are routinely disclosed without the consent of the subject.

5.10(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances when disclosure, if lawful, will generally occur without notice to the subject:

- a. For a routine use as permitted by law and in the particular record system.
- b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e. To the legislative services agency under Iowa Code Supplement section 2A.3.
- f. Disclosures in the course of employee disciplinary proceedings.
- g. In response to a court order or subpoena.

205—5.11(17A,22) Release to subject.

5.11(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 agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code sections 22.7(18) and 904.602.
- 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.
- d. As otherwise authorized by law.

5.11(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.

205—5.12(17A,22) Availability of records.

5.12(1) *Open records.* Board records are open for public inspection and copying unless otherwise prohibited by current rule or law.

5.12(2) *Confidential records.* The following records may be kept confidential. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids; (Iowa Code section 72.3)
- b. Tax records made available to the agency; (Iowa Code sections 422.17, 422.20)
- c. Minutes of closed meetings of a governmental body; (Iowa Code section 21.5(4))
- d. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)(d);
- e. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency 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 tolerance 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 agency;
- (Iowa Code section 22.7)

f. Records which constitute attorney work product, or attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa Rule of Civil Procedure 1.503(3), Federal Rule of Civil Procedure 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility and case law;

g. Other records made confidential by law.

205—5.13(17A,22) Personally identifiable information.

5.13(1) This rule describes the nature and extent of personally identifiable information which is collected, maintained and retrieved by the agency by personal identifier in record systems as defined in this rule. For each record system, this rule:

a. Describes the legal authority for the collection of that information and the means of storage of that information; and

b. Indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

5.13(2) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

5.13(3) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, and tax withholding information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

205—5.14(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes. This rule describes groups of records maintained by the board other than record systems as previously defined. These records are routinely available to the public. However, the board's file of these records may contain confidential information, as discussed in rule 5.12(17A,22). The following records are stored both as hard copy and in automated data processing systems unless otherwise noted.

5.14(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.

5.14(2) *Board meeting records.* Agendas, minutes and materials presented to the board are available from the office of the director, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

5.14(3) *Publications.* News releases, annual reports, project reports, board newsletters, and related documents are available from the board office. Board news releases, project reports, and newsletters

may contain information about individuals, including board staff or members of the board councils or committees. This information is not retrieved by individual identifier.

5.14(4) *Statistical reports.* Periodic reports of the board for various board programs are available from the board office. Statistical reports do not contain personally identifiable information.

5.14(5) *Grants.* Records on persons receiving grants for various projects or programs are available through the office of the executive director. These records may contain information about employees or a grantee. This information is not retrieved by individual identifier and is not stored on an automated data processing system. The information is collected under the authority of Iowa Code chapter 904.

5.14(6) *Published materials.* The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law. These records are hard copy only.

5.14(7) *Policy manuals.* The board employees' manual, containing procedures describing the board's regulations and practices, is available. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the board office. Policy manuals do not contain information about individuals.

5.14(8) *Other records.* All other records that are not exempt from disclosure by law are available from the board office.

205—5.15(17A,22) Applicability. This chapter does not:

5.15(1) Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

5.15(2) Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

5.15(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.

5.15(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5.15(5) Make available records compiled by the agency 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, rules of discovery, evidentiary privileges and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11 and chapter 17A.

[Filed without Notice 5/27/88—published 6/15/88, effective 7/20/88]

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

[Filed 9/21/06, Notice 7/5/06—published 10/11/06, effective 11/15/06]

CHAPTER 6
PUBLIC COMMUNICATIONS AND RECORDS

205—6.1(22) General. The public may obtain information or make submissions to the board through the business office.

205—6.2(22) Communications from persons other than victims.

6.2(1) *Written communication preferred.* The board requests that all communications by a person other than a victim, as defined in rule 205—7.1(915), concerning an inmate, parolee, or work releasee be in writing so that the communication may readily be made a permanent part of the case file. Oral communications concerning an inmate, parolee, or work releasee by a person other than a victim will be heard only with the consent of the board.

6.2(2) *Disclosure to inmate.* The board shall place a written communication concerning an inmate, parolee, or work releasee in the case file. The board shall inform an inmate, parolee, or work releasee when a communication adverse to the inmate, parolee, or work releasee will be considered in making a parole or work release decision and shall disclose to the inmate, parolee, or work releasee the substance of any opinion regarding the inmate's, parolee's or work releasee's status unless withholding the information is requested by the person providing the statement or oral communication and the board determines that the release of the information would endanger the public safety.

205—6.3(22) Examination of board records.

6.3(1) *General.* The public may examine and copy board public records pursuant to Iowa Code chapter 22 at the board's business office. An individual wishing to examine or copy a record must schedule an appointment with the board's business office a minimum of three working days prior to the date on which the individual will review the information in question. When making the appointment, the requesting party shall specifically indicate the information desired. Complete inmate files will not be released except by court order. When photocopies of documents or copies of audiotapes or videotapes are provided, the board may require the requester to pay the cost of the copies plus a reasonable charge for copying. These charges are to be determined by the lawful custodian. The board may refer anyone requesting information which has been generated by a source outside the board to the agency or individual which generated the information.

6.3(2) *Lawful custodian.* The board shall designate the chairperson or the chairperson's designee as the lawful custodian of the records who shall be responsible for implementing the board's rules regarding disclosure of public records and coordination of staff in this regard and generally ensuring compliance by the staff with public records disclosure requirements.

205—6.4(904) Disclosure of information regarding inmates and parolees.

6.4(1) Public information. The following information regarding individuals receiving services from the department of corrections or a district department is public information and may be disclosed by the board to anyone who requests the information, except that information shall be limited to the offense for which an individual was last convicted:

- a. Name.
- b. Age and date of birth.
- c. Sex.
- d. Status (for example, inmate, parolee, or probationer).
- e. Location, except home street address.
- f. Duration of supervision.
- g. Offense or offenses for which the individual was placed under supervision.
- h. County of commitment.
- i. Arrest and detention orders.
- j. Physical description.

k. Type of services received, except medical, psychiatric, psychological, substance abuse, gambling and sex offender treatment information.

l. Disciplinary reports and decisions which have been referred to the county attorney or prosecutor for prosecution, and the following information from all other disciplinary reports:

(1) The name of the subject of the investigation.

(2) The alleged infraction involved.

(3) The finding of fact and the penalty, if any, imposed as a result of the infraction.

m. Inmate risk assessment score.

6.4(2) Confidential information regarding inmates and parolees. The following information regarding individuals receiving services from the department of corrections or a district department is confidential information and shall not be disclosed to the public:

a. Home street address of the individual receiving services or of that individual's family.

b. Department evaluations.

c. Medical, psychiatric, psychological, substance abuse treatment, gambling and sex offender treatment information.

d. Names of associates or accomplices.

e. Name of employer.

f. Social security number.

g. Prior criminal history including information on offenses when no conviction occurred.

h. Family and personal history.

i. Financial information.

j. Information from disciplinary reports and investigations other than that identified in subrule 6.4(1).

k. Investigations by the department of corrections or other agencies which are contained in the individual's file.

l. Department of corrections committee records containing confidential information.

m. Presentence investigations as provided under Iowa Code chapter 901.

n. Pretrial information that is not otherwise available in public court records or proceedings.

o. Correspondence of a personal or confidential nature as determined by the board or the department directed to the board or the department of corrections from an individual's family, victims, or employers.

p. Communications to the board by members of the public other than public officials to the extent that the board believes that those members of the public would be discouraged from making the communications if the communications were available for general public examination.

q. Victim registrations pursuant to 205—Chapter 7. A record containing information which is both public and confidential which is reasonably segregable shall not be confidential after deletion of the confidential information.

6.4(3) The board may disclose confidential information described in subrule 6.4(2) as follows:

a. The board may release statistical information which does not identify particular individuals.

b. The board may disclose information to the department of corrections; district departments; public officials for use in connection with their duties relating to law enforcement, audits, and other purposes directly connected with the administration of their programs; and public and private agencies providing services to individuals. Those receiving information shall be subject to the same standards as the board in dissemination and redissemination of information.

c. The board may disclose information when necessary for civil or criminal court proceedings pursuant to court order. The board may seek to have the court limit disclosure of confidential information.

d. The board shall give a supervised individual or former supervised individual access to the individual's own records in the custody of the board, except for those records that could result in physical or psychological harm to the individual or others, and disciplinary reports. Upon written authorization by a supervised individual or former supervised individual, the board may release information to any party included in the written release. This information is restricted to that which the individual can obtain.

205—6.5(904A) Inmate requests regarding risk assessment score. An inmate may request information from the board of parole regarding the inmate's risk assessment score. However, because an inmate's risk assessment score will not change unless the inmate is released from and later returned to prison, the board shall not be required to respond to more than one request regarding the risk assessment score per commitment to prison from each inmate.

These rules are intended to implement Iowa Code chapter 22 and sections 904.601, 904.602, and 904A.4.

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

CHAPTER 7
VICTIM NOTIFICATION

205—7.1(915) Definitions.

“*Notification*” means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit the board from also providing appropriate information to a registered victim by telephone.

“*Parole interview*” means an interview conducted by the board to consider an inmate’s prospects for parole pursuant to Iowa Code section 906.5.

“*Registered*” means having provided the county attorney with the victim’s written request for registration and current mailing address and telephone number, and having been approved by the county attorney.

“*Victim*” means a person who has suffered physical, emotional, or financial harm as the result of a public offense, other than a simple misdemeanor, committed in this state. The term also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under 18 years of age at the time of the offense.

“*Violent crime*” means a forcible felony, as defined in Iowa Code section 702.11, and includes any other felony or aggravated misdemeanor which involved the actual or threatened infliction of physical or emotional injury on one or more persons.

205—7.2(915) Victim registration. A victim may register by filing a written request-for-registration form with the county attorney. The county attorney shall notify the victim in writing and advise the victim of the victim’s registration and rights. The county attorney shall provide the appropriate offices, agencies, and departments, including the board, with a registered victim list. The board shall determine if an individual will be accepted as a registered victim. This determination shall be based solely upon criteria set out in the Iowa Code. A registered victim is responsible for keeping the victim’s address and telephone number current with the board in order to ensure timely notification.

205—7.3(915) Victim notification. The board shall notify a registered victim of a violent crime not less than 20 days prior to conducting a hearing at which the board will interview the inmate, and shall inform the victim that the victim may submit the victim’s opinion concerning the release of the inmate in writing prior to the hearing, or may appear personally or by counsel at the hearing to express an opinion concerning the inmate’s release.

205—7.4(915) Notification of decision. Whether or not the victim appears at the hearing or expresses an opinion concerning the offender’s release on parole, the board shall notify the victim of the board’s decision regarding release of the offender.

205—7.5(915) Written opinions concerning release. A registered victim may submit a written opinion concerning the release of the inmate at any time by mailing the opinion to the business office. The written opinion shall be made a permanent part of the inmate’s file and shall be reviewed when the board considers the inmate’s prospects for parole.

205—7.6(915) Appearances at parole interviews.

7.6(1) A registered victim of a violent crime may appear personally or by counsel at a parole interview to express an opinion concerning the release of the inmate.

7.6(2) If a registered victim of a violent crime intends to appear at a parole interview, the victim must comply with the rules of the department of corrections that require a visitor to a state institution to give prior notice of the intended visit and to receive approval for the visit.

7.6(3) A registered victim of a violent crime, or victim’s counsel, shall appear at the institution at the time set forth in the notice of parole interview. The victim or counsel shall inform institutional personnel of the purpose of the appearance. Institutional personnel shall coordinate the appearance of the victim or

victim's counsel with the board. At the appearance, the board shall permit the victim or victim's counsel to express an opinion concerning the release of the inmate.

205—7.7(915) Disclosure of victim information. Information regarding a registered victim, as well as the existence of a registered victim in a particular case, is confidential and shall not be disclosed to the public. A victim's registration, and the substance of any opinion submitted by the victim regarding the inmate's release, may be disclosed to the inmate at the discretion of the board.

These rules are intended to implement Iowa Code chapter 915.

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

CHAPTER 8
PAROLE AND WORK RELEASE CONSIDERATIONS

205—8.1(906) Purpose of parole and work release considerations. The board shall determine whether there is reasonable probability that an inmate committed to the custody of the department of corrections who is eligible for parole or work release can be released without detriment to the community or the inmate. The board shall consider the best interests of society and shall not grant parole or work release as an award of clemency.

205—8.2(906) Parole and work release eligibility.

8.2(1) Mandatory sentences. The board shall not grant parole to an inmate serving a mandatory minimum sentence. The board shall not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within six months of completing the mandatory minimum portion of the sentence. A parole or work release granted contrary to this rule shall be rescinded. Mandatory sentences are as follows:

- a. A life sentence imposed for conviction of a Class “A” felony pursuant to Iowa Code section 902.1;
- b. A mandatory minimum sentence imposed for use of a firearm pursuant to Iowa Code section 902.7;
- c. A mandatory minimum sentence imposed for violation of uniform controlled substance provisions pursuant to Iowa Code section 124.406 or 124.413;
- d. A mandatory minimum sentence imposed for being an habitual offender pursuant to Iowa Code section 902.8;
- e. A mandatory minimum sentence imposed for a prior forcible felony pursuant to Iowa Code section 902.11.

8.2(2) Parole and work release while on patient status. Generally, the board will not grant parole or work release to an inmate on patient status.

8.2(3) Parole to detainer. The board may grant parole to an inmate against whom a detainer has been placed by another state. Generally, the board will not parole an inmate to a detainer that is solely for prosecution.

8.2(4) Parole to other states. The board may grant parole to another state pursuant to the provisions of the interstate parole and probation compact set forth in Iowa Code chapter 907A.

205—8.3 Reserved.

205—8.4(906) Prior forcible felony mandatory minimum sentence. The board shall deny parole or work release to an inmate who is serving a mandatory minimum sentence pursuant to Iowa Code section 902.11.

205—8.5(904A) Risk assessment. The board shall assess the risk of an inmate committed to the custody of the department of corrections. The board shall utilize a risk assessment instrument approved by the board by resolution.

205—8.6(906) Parole and work release considerations.

8.6(1) Case reviews. The board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate’s prospects for parole or work release at any time. The board shall notify an inmate only if the inmate is granted parole or work release, except as provided in 8.16(3).

8.6(2) Interviews. The board may interview an inmate committed to the custody of the department of corrections at any time.

8.6(3) The board shall review the status of each inmate as directed by the Iowa Code, and shall provide the inmate with notice of its parole or work release decision. After an inmate has been granted

work release, the board shall review the inmate's status at least annually from the date of the decision to grant work release.

8.6(4) Class "A" felons, and Class "B" felons serving a sentence of more than 25 years, are excepted from the annual review requirement of 8.6(3).

8.6(5) Inmates serving a mandatory minimum sentence are excepted from the annual review requirements of 8.6(3) until such time as the mandatory minimum has expired.

8.6(6) Department initiated review. The department of corrections may recommend an inmate for parole or work release consideration at any time. The board shall discuss such a recommendation with department staff during the next regularly scheduled board session involving the institution where the inmate in question is incarcerated. The board may, at its discretion, interview the inmate prior to acting upon the recommendation of the department of corrections staff.

205—8.7(906) Parole and work release information. The board shall notify the department of corrections or a district department when an inmate is to be considered for parole or work release. The receipt of notice by the department of corrections or the district department shall constitute a request for updated information on the inmate. The board shall request information required for parole or work release decision making. The department of corrections or the district department shall furnish updated information to the board.

205—8.8(906) Interview notice. The board or the board's designee shall notify an inmate to be interviewed for parole or work release consideration of the time and purpose of the interview. Notice given to the department of corrections shall be considered notice to the inmate. Not less than 20 days prior to the interview, the board shall also notify the department of corrections of the scheduling of the interview, and the department shall make the inmate available to the board at the inmate's institutional residence as scheduled in the notice. However, if health, safety, or security conditions require moving the inmate to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

205—8.9(906) Continuance. The board may reschedule or continue a parole or work release interview upon its own motion or upon a showing of good cause, as determined by the board.

205—8.10(906) Factors considered in parole and work release decisions.

8.10(1) The board may consider the following factors and others deemed relevant to the parole and work release decisions:

- a. Previous criminal record;
- b. Nature and circumstances of the offense;
- c. Recidivism record;
- d. Convictions or behavior indicating a propensity for violence;
- e. Participation in institutional programs, including academic and vocational training;
- f. Psychiatric and psychological evaluations;
- g. Length of time served;
- h. Evidence of serious or habitual institutional misconduct;
- i. Success or failure while on probation;
- j. Prior parole or work release history;
- k. Prior refusal to accept parole or work release;
- l. History of drug or alcohol use;
- m. A parole plan formulated by the inmate;
- n. General attitude and behavior while incarcerated;
- o. Risk assessment.

8.10(2) Psychological and psychiatric evaluations. The board may request a complete psychiatric or psychological evaluation of an inmate whenever, in the opinion of the board, it would be beneficial to the board's decision. The board shall routinely request an evaluation of an inmate convicted of a crime

involving sexual abuse or personal violence, or of an inmate who has committed assaults or violent acts while incarcerated.

205—8.11(906) Information disclosure to inmate. The board shall normally consider only information that has been reviewed by the inmate, except when the board deems such review not feasible. The information shall be considered only if the following safeguards are followed:

8.11(1) The staff of the department of corrections shall discuss the information with the inmate and disclose to the inmate any factual allegations if the disclosure can be done in a manner that protects confidential sources.

Factual allegations shall include but not be limited to:

- a. Any statements attributed to the inmate;
- b. Any allegations of criminal or antisocial behavior with or without court conviction from within or without the institution;
- c. Any allegations of threats made by the inmate;
- d. Any allegations of drug addiction or alcoholism;
- e. Any allegations regarding family history, employment or education;
- f. Disciplinary record at the institution.

8.11(2) If any information from outside institutions under the supervision of the department of corrections is to be considered by the board, and it is necessary to protect the source, the inmate shall be informed of at least the following:

- a. The general substance of the information;
- b. The number of communications;
- c. The type of communications.

The inmate shall be given the opportunity to respond to information.

8.11(3) The inmate's reports from institutions under the supervision of the department of corrections, including reception reports, progress reports, medical reports, and social information or reports, should, to the extent possible, be structured so as to separate opinion from factual information. The factual information shall be made available for review by the inmate; opinion information shall be confidential. Psychiatric or psychological test results or diagnoses shall be deemed confidential.

205—8.12(906) Interview procedure. The board or board panel shall interview the inmate and consider the inmate's records with respect to history, current situation, parole and work release prospects, and other pertinent matters. The board or board panel shall give the inmate ample opportunity to express views and present materials.

205—8.13(906) Case review procedure. The board or board panel may consider the inmate's records and other information with respect to history, current situation, parole and work release prospects, and other pertinent matters. A case review may take place at any time and is in addition to any other required review.

205—8.14(906) Conduct at parole proceedings.

8.14(1) Parole proceedings shall be open to the public except as otherwise necessary or proper.

8.14(2) Conduct of inmate.

- a. Conduct of the inmate shall be in a manner consistent with decorum appropriate for a participant in a public meeting of a governmental body.
- b. An inmate may not orally or otherwise communicate with spectators or others present at the parole proceeding except as permitted by the panel or board.
- c. The inmate shall speak to the panel or board or counselor only when asked a question or directed otherwise to do so.
- d. Each inmate will be given an opportunity to make an independent statement to the panel or board at some point during the parole proceeding. The panel or board may limit this statement in any manner as to topic or time. Specifically subject to this limitation will be persons who have no realistic

grounds to believe a parole will be granted, i.e., those with mandatory minimum sentences, those serving life terms, or those having served short times relative to the severity of their crimes and length of their sentences.

e. Failure to comply with the direction of the panel or board in limiting statements, in communicating with persons present at the parole proceeding, or any absence of decorum which could disrupt or delay the proceeding may, at the discretion of the board, result in a forfeiture of the right to an interview and a request by the board to have the institutional staff remove the inmate.

f. An inmate who forfeits the right to an interview for reasons under 8.14(2)“*e*” or for any other reason shall not be interviewed again until the inmate’s next annual review, or until such earlier time as determined by the board, except that the inmate may request an earlier interview. The request is to be made through the board liaison officer, the counselor or other institutional staff member, or the ombudsman, together with assurance by the inmate that no repeat of the offending conduct or other offending conduct will occur. A reinterview is subject to the discretion of the panel or board.

8.14(3) Conduct of spectators.

a. Spectators may not participate in the parole proceedings. The number of spectators will be limited by the number of seats provided. Only board staff or institutional staff will be allowed to stand during the interviews or between interviews, except during breaks of the panel or board or as necessary to enter and leave during times designated by the panel or board. An exception will be made for television camera operators.

b. Spectators may not enter or leave the room during interviews or between interviews, except that the board or panel will designate times when persons may enter and leave. This will be done at reasonable intervals, and may be between interviews even though the board or panel does not take a break.

c. Entering and leaving the interview room before and after the interview sessions and during breaks in the interview sessions shall be subject to the restrictions imposed by the staff of the institution at which the session is being held.

d. Spectators shall make no utterances which are intended to be or can be heard by the inmate or the panel. This includes any conversation among spectators.

e. Spectators shall conduct themselves in a manner consistent with decorum appropriate for a public meeting of a governmental body.

f. Any activity deemed inappropriate by the panel or institutional staff under the guidelines in the rules may result in a request by the panel or institutional staff for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request will result in a request by the panel to have the person or persons removed by the institutional staff.

All spectator places shall be on a first-come, first-served basis in accordance with the rules of the institution or the department of corrections.

g. A spectator who leaves during a time designated for entering or leaving or during a short break by the panel may retain a place if the person returns at the next time designated for that purpose. A person does not retain a place at the hearing over breaks taken for lunch or dinner or overnight.

8.14(4) Conduct of the media.

a. General. Broadcasting, televising, recording and photographing will be permitted in the interview room during open sessions of the board or panel, including recesses between sessions, under the following conditions:

(1) Permission first shall have been granted by the institution or department of corrections, which may prescribe conditions and restrictions for bringing equipment into areas of the institution.

(2) Media coverage of any proceeding which is held in closed session under Iowa law is prohibited.

(3) The quantity and types of equipment permitted in the interview room shall be subject to the discretion of the panel or board within the guidelines in these rules, and subject to the permission of the institution or department of corrections.

(4) Notwithstanding the provisions of any of these procedural or technical rules, the panel or board may permit the use of other equipment provided the application for variance is made in advance. Ruling

upon the variance application shall be in the discretion of the panel or board, subject to permission of the institution or department of corrections to bring in or move equipment.

(5) The panel or board may limit or terminate photographic or electronic media coverage by any or all media participants at any time during the proceedings in the event the panel or board finds that rules in this chapter or additional rules imposed by the institution or department of corrections have been violated.

(6) The rights of motion picture and electronic coverage provided herein may be exercised only by persons or organizations which are part of the news media, except that individuals may use sound tape recorders.

b. Advance notice of coverage. All requests by representatives of the news media to use television cameras or electronic sound recording equipment in the interview room shall be made to the institution in advance in accordance with department of corrections rules.

c. Equipment specifications. Equipment to be used by the media or public in interview rooms or meeting rooms during interview proceedings or board meetings held at the institutions must be unobtrusive and must not produce distracting sound. In addition, the equipment must satisfy the following criteria, where applicable:

(1) Still cameras. Still cameras and lenses must be unobtrusive, without distracting light or sound.

(2) Television cameras and related equipment. Television cameras are to be electronic and, together with any related equipment to be located in the interview room, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the parole interview being covered are unable to determine when recording is occurring.

(3) Audio equipment. Microphones, wiring and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the proceeding being covered. Any changes in existing audio systems must be approved by the panel or board. No modifications of existing systems shall be made at public expense.

(4) Advance approval. It shall be the duty of media personnel to demonstrate to the panel or board reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this rule. Failure to obtain advance panel or board approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least 15 minutes prior to the scheduled time of commencement of the proceeding.

d. Lighting. Other than light sources already existing in the interview room, no flashbulbs or other artificial light device of any kind shall be employed in the interview room. With the concurrence of the panel and institutional staff, however, modifications may be made in light sources existing in the interview room (e.g., higher wattage light bulbs), provided the modifications are installed and maintained without public expense.

e. Equipment and pooling. The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the interview room shall apply:

(1) Still photography. Not more than two still photographers, each using not more than two camera bodies and two lenses, shall be permitted in the interview room at any one time during a parole proceeding.

(2) Television. Not more than two television cameras, each operated by not more than one camera person, shall be permitted in the interview room during a parole proceeding. All components must be contained within the area designated for the camera. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside the interview room.

(3) Audio. Not more than one audio system shall be set up in the interview room for broadcast coverage of a parole proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the interview room, if the pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside the interview room.

(4) Pooling. Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility

of the media, and the panel or board shall not be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular parole proceeding.

f. Location of equipment and personnel. Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the interview room designated by the panel or institutional staff. The area or areas designated shall provide reasonable access to the proceeding to be covered.

g. Movement during proceedings. Television cameras and audio equipment may be installed in or removed from the interview room only when the panel or board is not in session. In addition, the equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the interview room while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

h. Decorum. All still photographers and broadcast media personnel shall be properly attired and shall maintain decorum appropriate for a public meeting of a governmental body at all times while covering a parole proceeding.

205—8.15(906) Parole and work release decisions.

8.15(1) The board shall grant parole to an inmate on work release status if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board shall deny parole.

8.15(2) The board shall grant parole or work release to an inmate if at least three members of the board agree that the inmate can be released without detriment to the community or to the inmate. If three members do not agree, the board shall deny parole or work release.

8.15(3) and **8.15(4)** Rescinded IAB 10/31/12, effective 12/5/12.

8.15(5) The board may determine if an inmate shall be required to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release. The board shall consider the deterrent effect of DNA profiling, the likelihood of repeated violations by the offender, and the seriousness of the offense. When funds have been allocated from the general fund of the state, or funds have been provided by other public or private sources, the board shall order DNA profiling, if appropriate. [ARC 0421C, IAB 10/31/12, effective 12/5/12]

205—8.16(906) Notice of parole and work release decisions.

8.16(1) The board shall give notice of a decision to grant parole by issuing an order for parole to the facility where the inmate in question is incarcerated.

8.16(2) The board shall give notice of a decision to grant work release by issuing an order for work release to the facility where the inmate in question is incarcerated.

8.16(3) The board shall give notice of a decision to deny parole or work release by issuing a notice of parole or work release denial to the facility where the inmate in question is incarcerated.

8.16(4) The board need not disclose a decision to grant or deny parole or work release to anyone other than the inmate in question and the facility where the inmate is incarcerated until at least two working days have elapsed from the date of the decision.

205—8.17(906) Parole authorized following work release.

8.17(1) The board may, at the time of granting work release, grant an offender parole contingent upon successful completion of work release. Whenever the board grants parole contingent upon successful completion of work release, it shall indicate in the offender's file any special conditions for parole and that parole is contingent upon successful completion of work release.

8.17(2) The residential manager shall make a determination whether the offender has successfully completed the work release. For the purpose of this rule, successful completion of work release shall mean, at a minimum, the absence of any violent acts or threats of violence by the offender from the time the work release was authorized and either (1) the offender has completed all board of parole recommended programs or (2) the offender has enrolled in all recommended programs not completed

and is making satisfactory progress toward completion and the facility is able to arrange for continued program participation while the offender is on parole. When an offender successfully completes the work release program, the residential manager shall certify that fact to the board in a written or electronic certification. Upon receipt of the certification, the chairperson or the chairperson's designee shall cause a parole order to be issued and forwarded to the residential facility where a parole agreement will be executed by the offender with such parole conditions as the board may require in its original release decision. Parole shall be effective only upon execution of the parole order and agreement by the parole officer and the parolee. No further action is required by the parole board for said parole. Before the parole becomes effective, the chairperson or the chairperson's designee may refer the case back to the board for further consideration. Nothing in this rule shall prevent the parole board from considering revocations of work release or parole for violations of the parole order, agreement, or any other provision of law, as otherwise provided in the board's administrative rules.

8.17(3) If the residential manager does not certify that an offender has successfully completed work release within the six-month limit established in Iowa Code section 904.904, and if the offender's work release has not otherwise been revoked, the offender's case shall be reviewed by the board of parole. The board may grant parole, extend work release, refer the offender back to prison, or take any other action authorized by law.

8.17(4) The grant of parole contingent upon successful completion of work release shall comply with subrules 8.15(1) through 8.15(4).

8.17(5) An offender who has been granted parole contingent upon successful completion of work release and who fails to successfully complete work release for whatever reason shall be reviewed for further release consideration according to the board's administrative rules.

8.17(6) Parole granted under this rule shall be administered and supervised according to the board's administrative rules, 205—Chapters 10 and 11.

These rules are intended to implement Iowa Code chapters 904A and 906.

[Filed 7/26/76, Notice 1/26/76—published 8/9/76, effective 9/13/76]

[Filed 2/7/79, Notices 10/4/78, 11/1/78—published 3/7/79, effective 4/11/79]

[Filed 6/2/80, Notice 2/6/80—published 6/25/80, effective 7/30/80]

[Filed 9/23/82, Notice 7/7/82—published 10/13/82, effective 11/19/82]

[Filed 4/5/83, Notice 2/16/83—published 4/27/83, effective 6/1/83]

[Filed 7/13/84, Notice 5/9/84—published 8/1/84, effective 9/4/84]

[Filed 2/11/85, Notice 10/10/84—published 2/27/85, effective 4/13/85][◇]

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

[Filed ARC 0421C (Notice ARC 0320C, IAB 9/5/12), IAB 10/31/12, effective 12/5/12]

[◇] Two or more ARCs

CHAPTER 9
CERTIFICATES OF EMPLOYABILITY

205—9.1(906) Definitions. As used in this chapter:

“Direct relationship” means that the nature of criminal conduct for which the eligible offender was convicted has a direct bearing on the offender’s fitness or ability to perform one or more of the duties or responsibilities necessarily related to the certificate of employability sought.

“Eligible offender” means a person who has been convicted of one or more than one eligible crime or eligible offense and has been sentenced to the custody of the director of the Iowa department of corrections. Persons required to register under Iowa Code chapter 692A are ineligible for the certificate of employability program.

“Employment” means any occupation, vocation or employment, or any form of vocational or educational training. For the purposes of this chapter, “employment” shall not include membership in any law enforcement agency.

“Private employer” means any person, company, corporation, labor organization or association.

“Public agency” means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

[ARC 7742B, IAB 5/6/09, effective 6/10/09]

205—9.2(906) Certificates of employability.

9.2(1) The provisions of this chapter shall apply to any application by an eligible offender to any public agency or private employer for employment, except where a mandatory forfeiture, disability or bar to employment is imposed by law and has not been removed by an executive pardon. The provisions of this chapter shall also apply to an application to a licensing agency by an eligible offender to obtain licensure required for employment.

9.2(2) When a certificate of employability is presented to a public agency, the licensing agency cannot deny a license based on the felony conviction or based on a lack of good moral character, unless the agency makes a determination that there is a direct relationship between the offense and the license sought or that the issuance of the license involves unreasonable risk to property or the safety and welfare of specific individuals or the general public.

9.2(3) A certificate of employability shall not, however, in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege in accordance with the provisions set out in this chapter.

[ARC 7742B, IAB 5/6/09, effective 6/10/09]

205—9.3(906) Issuance of a certificate of employability.

9.3(1) The department of corrections shall issue a certificate of employability, at the time of release, to an eligible offender who:

- a. Receives a parole, work release, or early discharge from the board of parole; and
- b. Successfully completes one of the following:
 - (1) Department of corrections registered apprenticeship program; or
 - (2) National Career Readiness Certificate and the life skills program.

9.3(2) Reserved.

[ARC 7742B, IAB 5/6/09, effective 6/10/09; ARC 2678C, IAB 8/17/16, effective 12/19/16]

205—9.4(906) Certificate not to be deemed a pardon. Nothing contained in this chapter shall be deemed to alter or limit or affect the manner of applying for pardons to the governor, and no certificate issued hereunder shall be deemed or construed to be a pardon.

[ARC 7742B, IAB 5/6/09, effective 6/10/09; ARC 2678C, IAB 8/17/16, effective 12/19/16]

These rules are intended to implement Iowa Code section 906.19.

[Filed ARC 7742B (Notice ARC 7337B, IAB 11/19/08), IAB 5/6/09, effective 6/10/09]

[Filed ARC 2678C (Notice ARC 2590C, IAB 6/22/16), IAB 8/17/16, effective 12/19/16]

CHAPTER 10
PAROLE AND WORK RELEASE SUPERVISION

[Prior to 2/22/89, see Parole, Board of[615] Ch 6]

205—10.1(906) Release processing. Following the issuance of an order for parole or work release by the board, the inmate shall be processed for release pursuant to the rules and procedures of the department of corrections and the district department.

205—10.2(906) Parole supervision. An inmate granted parole or work release shall be under the supervision of the department of corrections, the district department, or a receiving state pursuant to the interstate probation and parole compact. Parole supervision shall continue until the expiration of the maximum sentence, subject to early discharge by the board or the district department.

205—10.3(906) Parole or work release agreement. A parole or work release agreement containing standard and special conditions of parole or work release shall be prepared without unreasonable delay following the board's issuance of the order for parole or work release. The board may change these standard conditions from time to time. Special conditions of parole may be imposed at any time in accordance with the needs of the parolee as determined by the board, the department of corrections, or the district department. The parole or work release agreement may provide for a search process and procedure of the parolee or work releasee. The parole or work release shall not commence until the inmate has signed the agreement. If the inmate is on work release status at the time parole is granted, the inmate shall remain on work release status until the parole agreement is signed by the parole officer and the inmate.

These rules are intended to implement Iowa Code chapter 906.

[Filed 7/26/76, Notice 1/26/76—published 8/9/76, effective 9/13/76]

[Filed 2/7/79, Notices 10/4/78, 11/1/78—published 3/7/79, effective 4/11/79]

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

CHAPTER 11
PAROLE REVOCATION
[Prior to 2/22/89, Parole, Board of[615] Ch 7]

205—11.1(906) Voluntary termination of parole. Any voluntary termination of parole should be executed in writing by the parolee, reviewed by the parole officer, and approved by an administrative parole judge. Upon the execution of the voluntary termination of parole, the parolee's parole is terminated and the parolee shall be returned to the Iowa Medical and Classification Center at Oakdale as soon as reasonably possible. The administrative parole judge shall, after consultation with the parole officer, determine if the parolee shall be incarcerated prior to the parolee's return to the Iowa Medical and Classification Center. The parole officer shall make arrangements accordingly. The parolee shall receive credit for the time spent on parole prior to the voluntary termination of parole as determined by the administrative parole judge.

205—11.2(908) Work release day reporting revocation. When a work release day reporting inmate is subject to revocation of day reporting status, the work release day reporting inmate shall be entitled to all procedural protections afforded parolees pursuant to Iowa Code sections 908.3 to 908.7 and rules 205—11.3(908) to 205—11.11(908).

205—11.3(908) Revocation initiated. Parole revocation procedures shall be initiated only as provided by Iowa Code chapter 908, which this rule is intended to implement.

205—11.4(908) Revocation of parole. The board of parole or its administrative parole judge, for good cause shown, may revoke any parole previously granted. Good cause for revocation of parole shall include the violation of a condition or conditions of the parole agreement or parole plan. Parole revocation procedures, including the parole revocation hearing, are governed by Iowa Code chapter 17A.

205—11.5(908) Parole violations.

11.5(1) The parole officer shall report to the board any parolee who is reasonably believed to have engaged in any of the following types of behavior:

- a. Violation of any federal or state laws, except simple misdemeanors.
- b. Any violent or assaultive conduct.
- c. Possession, control or use of any firearms, imitation firearms, explosives or weapons as defined in federal or state statutes.
- d. Sale, possession, continual or problem use, transportation or distribution of any narcotic or other controlled substance or excessive use of alcohol by the parolee.
- e. A parolee whose whereabouts are unknown and who has been unavailable for contact for 30 days, or about whom reliable information has been received indicating that the parolee is taking flight or absconding.
- f. Any behavior indicating that the parolee may be suffering from a mental disorder which impairs the parolee's ability to maintain the parolee in the community or which makes the parolee a danger to the parolee or others when the mental disorder cannot be adequately treated while the parolee is in the community.
- g. Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the parole officer.

11.5(2) The parole officer or supervisor is authorized to sanction any other parolee misconduct not required to be reported above.

205—11.6(908) Parole violation report. The parole violation report is a document prepared by the parole officer on a form or medium provided by the board specifying the parole violation charges against a parolee and containing or referring to information known to the parole officer relevant to the charges.

11.6(1) Supplemental parole violation report. A supplemental parole violation report may be submitted to report sufficient new information or evidence which proves or disproves violations previously charged; note court action on charges which are being prosecuted in a criminal proceeding; expand, clarify, or correct information in an earlier report; provide the board with information not related to the violation but which may affect the board's decision regarding the appropriate disposition; provide additional requested information to the board at any time; or change the parole officer's recommendation. A supplemental report shall be filed upon the apprehension of a parolee on absconder status.

11.6(2) Recommendations. The parole officer shall recommend the appropriate disposition necessary to deal with the alleged violation. In a parole violation report, the parole officer may make one of the following recommendations:

a. Continue on parole. This recommendation may be used when a violation charge is not serious enough to warrant reincarceration. A copy of the violation report containing a "continue on parole" recommendation shall be personally delivered and explained to the parolee by the parole officer, and the parolee shall be given an opportunity to admit the alleged violations. Admitted violations contained in the report may be used to adjust time calculations in a later revocation proceeding. In the event that a dispute arises as to alleged violations, the parolee may request a parole hearing. An administrative parole judge shall review the violation report and enter an order either affirming the recommendation to continue on parole or scheduling the matter for a parole revocation hearing.

A parolee shall be allowed only two violation reports containing a "continue on parole" recommendation in a 12-month period, after which a parole revocation hearing must be scheduled.

Generally, violations occurring more than 12 months prior to the request for a parole revocation hearing will not be used to adjust time calculations, except in absconder cases and related matters.

b. Schedule for revocation proceedings. This recommendation may be used whenever the violation(s) alleged is so serious that reincarceration is necessary.

c. Delay action. This recommendation is used when there is a lack of information at the time the report is submitted or because charges are still pending and final disposition is unknown or the whereabouts of the parolee are unknown. The parole officer shall notify the board of the reason(s) for the recommendation to delay action.

d. Issue a detainer. This recommendation is used to request that an Iowa detainer be placed against an Iowa parolee who is serving time in another jurisdiction for an offense committed while on parole which would constitute a felony or aggravated misdemeanor if committed in Iowa.

e. Continue on parole and impose special condition 209A of the parole agreement, participation in the violator's program. This recommendation may be used when there has been a violation of parole, but treatment in the violator's program is seen as a reasonable alternative to revocation of parole.

f. Automatic revocation. This recommendation may be used when a parolee has been convicted of and sentenced for a new felony committed while on parole or when the parolee is convicted and sentenced to incarceration in a state correctional institution for an aggravated misdemeanor committed while on parole.

11.6(3) District review.

a. Parole officer's responsibility. After discovery of information indicating a possible violation(s) of parole and determination by the parole officer that the violation(s) must be reported to the board, the parole officer shall prepare a parole violation report.

b. Parole supervisor review. After the preparation of a parole violation report, the supervisor shall review the report. If the supervisor concurs with the recommendation made, the supervisor shall submit the report to the business office of the parole board for review and scheduling of a parole revocation hearing, if required.

205—11.7(908) Parole revocation hearing. Following receipt of a parole officer's request for a parole revocation hearing, the administrative parole judge or board's designated officer shall set the date, time and place of the parole revocation hearing and shall cause a notice of parole revocation hearing to be completed. The parole revocation hearing shall be held in any county in the same judicial district as that

in which the alleged parole violator had the initial appearance, or in the county from which the warrant for the arrest of the alleged parole violator was issued.

11.7(1) Parole revocation hearing notice. The parole officer or board's designated officer shall cause to be prepared a written notice to the parolee of the date, time, and place of the parole revocation hearing, which shall:

a. Include a complete copy of the report of violations including all documents referred to therein except confidential material defined in 205—subrule 6.4(2).

b. Be served upon the parolee by personal service. The notice may be served by any person 18 years of age or older at least seven days prior to the parole revocation hearing unless the parolee waives the right to seven days' advance notice.

c. Inform the parolee of the purpose of the hearing, the violations of parole conditions alleged, the circumstances of the alleged violations, the possible action which may be taken as a result of the revocation proceedings, and the following rights to which the parolee shall be entitled at the parole revocation hearing:

(1) To appear and speak in the parolee's own behalf and to be aided by an interpreter if aid is determined to be necessary by the administrative parole judge.

(2) To be represented by an attorney or, if the parolee is indigent, the right to be represented by an attorney pursuant to Rule 2.28 of the Iowa Rules of Criminal Procedure.

(3) To remain silent.

(4) To present witnesses to testify on the parolee's behalf as to matters relevant to the alleged violation of parole.

(5) To confront and cross-examine adverse witnesses unless the administrative parole judge determines that such witnesses would be subjected to risk of harm.

(6) To present documentary evidence and any relevant material or information.

11.7(2) Testimony at parole revocation hearing. All testimony shall be under oath.

11.7(3) Parole revocation hearing recorded. Parole revocation hearings shall be mechanically recorded. The recording or transcription thereof shall be filed and maintained by the board of parole for at least five years from the date of the parole revocation hearing.

11.7(4) Witnesses segregated. The administrative parole judge on the judge's own motion or on the request of the parolee, parolee's counsel, or any representative of the state may order witnesses to be segregated except that the parole officer, parolee, and counsel may be present at all times at the hearing.

11.7(5) Parole revocation hearing evidence. The admissibility of evidence at parole revocation proceedings is governed by Iowa Code section 17A.14.

a. Documentary evidence. The parole officer shall ensure that all relevant documentary evidence is available at the hearing and has been made available to the parolee and the parolee's attorney prior to the hearing unless designated confidential. This evidence includes the violation report and statements of witnesses. When relevant documentary evidence is not available, the parole officer shall specify what evidence is unavailable and why.

b. Physical evidence. Physical evidence is ordinarily not required at the hearing. The parole officer may bring physical evidence to the hearing if the parolee has requested it or it appears necessary for the hearing, security is not endangered, and there is no other means of presenting the information.

11.7(6) Witnesses.

a. Parolee request. A parolee may request either friendly or adverse witnesses. If a witness is requested by the parolee or the parolee's attorney, the parolee or the parolee's attorney shall notify the parole officer.

b. Parole officer request. If, in preparing the case prior to the hearing, the parole officer requires a particular witness to demonstrate essential facts of violation, attendance of that witness may be requested by the officer even though the parolee has not requested that witness. If a witness is requested by the parole officer, the officer shall notify the parolee or the parolee's attorney.

c. Witnesses' transportation. All witnesses shall provide their own transportation.

d. Fearful witnesses. All witnesses who refuse to attend the hearing either because they would be subjected to risk of harm if their identities were disclosed or who, even if their identities were known,

fear for their safety should they attend the hearing shall be interviewed by the parole officer prior to the hearing, and their information and the reasons for their fear shall be documented in writing or on tape. The administrative parole judge shall determine whether good cause exists to excuse a witness's attendance and shall document the decision including the reasons.

e. Interviewing witnesses. A parolee or the parolee's attorney has the right to speak to possible witnesses, but it is completely within the discretion of an individual witness whether to speak or to disclose the witness's whereabouts to a parolee or the parolee's attorney. No attempt shall be made by the parole board staff to influence the witness's decision.

11.7(7) Subpoenas—general. Subpoenas may be issued to require the attendance of witnesses or the production of documents at parole revocation hearings.

a. Who may request. The parolee, the parolee's attorney, parole officer, or board staff may request that a subpoena be issued.

b. To whom made. Requests shall be made directly to the administrative parole judge or the board's designated officer as appropriate.

c. When made. The request shall be made prior to the scheduled hearing.

d. Subpoena duces tecum. The request for a subpoena duces tecum shall be accompanied by a declaration in support of the request. The declaration must show good cause for production of documentary evidence and specify precisely the documentary evidence to be produced, the relevance and materiality of that evidence to the hearing, and verification that the requested witness has possession or control of the documentary evidence.

e. The board of parole shall not be required to pay subpoena service fees, witness fees, or witness transportation expenses.

11.7(8) Continuances.

a. A hearing may be continued by the presiding administrative parole judge for good cause shown, either upon the presiding judge's own motion or upon the request of a party. A party's request for continuance shall be made in writing to the board's business office prior to the hearing. Each party shall be granted only one continuance except that in the case of extreme emergency, determined by the presiding administrative parole judge, further continuance may be granted.

b. If, because of an emergency or other good cause, a party having received timely notice is unable to attend the hearing or to request continuance within the allotted time, the presiding administrative parole judge may continue the hearing and schedule another hearing with notice to all interested parties.

c. A notice of continuance may be served upon the parolee's attorney of record for the parole revocation proceeding, in lieu of personal service upon the parolee.

d. If a notice of continuance does not involve any new allegations of parole violation, it need not be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing date. However, if the notice of continuance includes allegations of violations beyond those contained in the original notice of hearing, it must be served upon the parolee or the parolee's attorney of record at least seven days prior to the hearing date.

11.7(9) Areas of responsibility. The following areas of responsibility will apply for a parole revocation hearing.

a. The parole officer shall be responsible for the following:

(1) Coordinating and scheduling location, security, and control of the parole revocation hearing in a courtroom unless good cause is established prior to the hearing;

(2) Preparing notice of hearing forms and causing the notices to be served;

(3) Notifying the parolee's attorney of record of the hearing date, time, and place;

(4) Notifying all necessary state witnesses of the hearing date, time, and place;

(5) Processing any required subpoenas on behalf of the state;

(6) Ensuring that all relevant state documents, forms, and materials are available at the hearing;

(7) Attending the hearing;

(8) Arranging security for posthearing transfer of the parolee in the event incarceration is ordered.

b. The administrative parole judge shall be responsible for the following:

(1) Maintaining records on all hearings in the field;

- (2) Advising the business office regarding progress of each case;
- (3) Forwarding to the business office all materials and forms when hearings are completed.

11.7(10) Parole revocation hearing—adjudication.

a. At the conclusion of the adjudication stage of the hearing, the administrative parole judge shall determine whether the parolee has violated the conditions of parole and shall verbally advise the parolee of the decision.

b. If the administrative parole judge determines that the parolee has not violated the conditions of parole, the judge shall order that the parolee be released from custody and continued on parole.

c. If the administrative parole judge finds that the parolee has violated a condition or conditions of parole, the judge shall make one of the following dispositions at the parole revocation hearing:

- (1) Revocation of parole;
- (2) Revocation of parole with the parolee placed on work release;
- (3) Reinstatement of parole with the previous parole conditions;
- (4) Reinstatement of parole with a modification of the parole conditions;
- (5) Continuation of the dispositional portion of the hearing.

d. The administrative parole judge shall determine from the record established at the final revocation hearing the date(s) of violation of parole. The judge shall also determine the number of days of parole which shall not be counted toward the discharge of the parolee's sentence. This number shall not exceed the number of days after the date of first violation during which the parolee was not incarcerated.

11.7(11) Parole revocation—hearing summary. The administrative parole judge or the board's designated officer shall forward a summary of the parole revocation hearing to the parolee, the parolee's attorney, the parole officer, and the board office as soon as reasonably possible following the parole revocation hearing. The summary of the parole revocation shall consist of a summary of the proceeding and shall contain the judge's findings of fact, conclusions of law and disposition of the matter.

11.7(12) Parole revocation hearing—conduct of the media. The provisions governing the conduct of the media at parole interviews as set out in 205—subrule 8.14(4) shall also apply to parole revocation hearings, except that decisions committed to the discretion of the board or board panel in that rule shall be made by the presiding administrative parole judge.

205—11.8(908) Appeal or review. The order of the administrative parole judge shall become the final decision of the board of parole unless, within ten days of the date of the decision, the parole violator appeals the decision or a panel of the board reviews the decision on its own motion. On appeal or review of the judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision. The appeal or review shall be conducted pursuant to rules adopted by the board of parole. The record on appeal or review shall be the record made at the parole revocation hearing conducted by the administrative parole judge. Appeals must be received at the parole office or be postmarked by the applicable date or they will not be considered.

205—11.9(908) Interstate compact parole revocation probable cause hearings. The Iowa board of parole may conduct interstate compact parole probable cause hearings under the same procedures as the Iowa parole revocation hearings.

11.9(1) Interstate compact parole revocation probable cause hearings. The Iowa board of parole, or an administrative parole judge, may conduct a probable cause hearing for a parolee from another state who is on parole in Iowa under the terms of the interstate compact on probation and parole according to the same procedures which govern parole revocation hearings for Iowa parolees who are on parole in Iowa.

11.9(2) Interstate compact parole revocation hearings. If an Iowa parolee was on parole outside the state of Iowa through the interstate compact on probation and parole and has been returned to Iowa following a finding of probable cause in the receiving state, a parole revocation hearing shall be conducted for the parolee at the Iowa institution at which the parolee is incarcerated. This hearing

shall be conducted according to the same procedures as those specified for hearings conducted for Iowa parolees who are on parole in the state of Iowa.

205—11.10(908) Parolee convicted of new offenses. A parolee who is found guilty of a new offense or who pleads guilty to a new offense, including a simple misdemeanor, has no right to the adjudication stage of the parole revocation hearing with regard to the new offense.

205—11.11(908) Waivers. When the parole officer makes a recommendation to the board of parole for revocation of parole, the parole officer shall inform the parolee of the parolee's rights and afford the parolee the opportunity to execute a waiver of parole revocation hearing.

The parole officer shall also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to the parole revocation hearing's being conducted over the telephone.

11.11(1) Waiver of parole revocation hearing. A waiver of parole revocation hearing shall constitute an admission of the alleged violation(s) and shall include a waiver of any right to a personal appearance before the administrative parole judge to contest the violations.

11.11(2) Parole revocation hearing waiver procedures. If the parolee desires to execute a waiver of parole revocation hearing, the waiver shall be entered on the appropriate form provided by the board which shall be signed by the parolee in the presence of the administrative parole judge or by the parolee in the presence of the parole officer/supervisor if the waiver hearing is conducted electronically. The administrative parole judge shall make a verbatim record of the waiver proceeding and shall address the parolee personally and inform the parolee of and determine that the parolee understands the contents of the waiver form which shall include:

- a. The nature of the parole violation to which the waiver is addressed;
- b. The legal rights of the parolee;
- c. The fact that the execution of the waiver constitutes an admission of the alleged violation(s);
- d. The fact that the parolee may be committed to the custody of the Iowa department of corrections without further proceedings;
- e. The fact that the waiver is complete and final upon execution;
- f. The fact that the waiver may be appealed according to the parole board's parole revocation appeal process in rule 205—11.8(908).

11.11(3) Waiver of the right to personal appearance. In the event the parolee executes a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the parole revocation hearing shall be scheduled and conducted as a routine parole revocation hearing with the exception that it shall be conducted by telephone. In the event the parolee does not execute a waiver of the right to personal appearance and consent to parole revocation hearing to be conducted over the telephone, the hearing shall be scheduled and may, at the discretion of the administrative parole judge, be conducted electronically by videoconference.

[ARC 2678C, IAB 8/17/16, effective 12/19/16]

205—11.12(908) Conviction of a felony or aggravated misdemeanor while on parole. When a parolee is convicted and sentenced to incarceration in Iowa for a felony or aggravated misdemeanor committed while on parole, or is convicted and sentenced to incarceration under the laws of any other state of the United States or a foreign government or country for an offense committed while on parole and which if committed in Iowa would be a felony or aggravated misdemeanor, the parolee's parole shall be deemed revoked as of the date of the commission of the offense.

11.12(1) The parole officer shall inform the sentencing judge that the convicted defendant is a parole violator. The term for which the defendant shall be imprisoned as a parole violator shall be the same as that provided in cases of revocation of parole for violation of the conditions of parole. The new sentence of imprisonment for conviction of a felony or aggravated misdemeanor shall be served consecutively to the sentence for which the defendant was on parole, unless a concurrent term of imprisonment is ordered by the court.

11.12(2) The parole officer shall forward to the board of parole a violation report together with a file-stamped copy of the judgment entry and sentencing order for the offense committed during the parole. An administrative parole judge shall review the violation report and the judgment entry and sentencing order and, if satisfied that the conditions of Iowa Code section 908.10 or 908.10A and of this rule have been met, shall issue an order revoking the parole. The judge shall also determine the date of commission of the felony or aggravated misdemeanor offense and the date of subsequent incarceration in a state institution. Time loss shall be the time between these two dates, except that the parolee shall receive credit for any time the parolee was incarcerated in a county jail between these two dates.

11.12(3) The parolee shall be notified in writing that the parole has been revoked on the basis of the new conviction, and a copy of the commitment order shall accompany the notification. The parolee's record shall be reviewed pursuant to the provisions of Iowa Code section 906.5, or as soon as practical after a final reversal of the new conviction.

11.12(4) An inmate may appeal the revocation of parole under this rule according to the procedure indicated in rule 205—11.8(908).

11.12(5) Neither the administrative parole judge nor the board shall retry the facts underlying any conviction.

[ARC 2678C, IAB 8/17/16, effective 12/19/16]

These rules are intended to implement Iowa Code chapters 906 and 908.

[Filed 7/26/76, Notice 1/26/76—published 8/9/76, effective 9/13/76]

[Filed 2/7/79, Notices 10/4/78, 11/1/78—published 3/7/79, effective 4/11/79]

[Filed 11/17/81, Notice 8/5/81—published 12/9/81, effective 1/14/82]

[Filed 9/23/82, Notice 7/7/82—published 10/13/82, effective 11/19/82]

[Filed 4/5/83, Notice 2/16/83—published 4/27/83, effective 6/1/83]

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

[Filed 10/6/06, Notice 8/16/06—published 10/25/06, effective 11/29/06][◇]

[Filed ARC 2678C (Notice ARC 2590C, IAB 6/22/16), IAB 8/17/16, effective 12/19/16]

[◇] Two or more ARCs

CHAPTER 12
Reserved

CHAPTER 13
PAROLE DISCHARGE

[Prior to 2/22/89, Parole, Board of[615] Ch 8]

205—13.1(906) Discharge from parole supervision.

13.1(1) *Statutory discharge.* The board shall discharge a parolee from parole supervision when the term of the parolee's sentence expires.

13.1(2) *Early discharge.* The board or the supervising district department may discharge a parolee from parole supervision prior to the expiration of the term of the parolee's sentence when the board or district department determines that the parolee is able and willing to fulfill the obligations of a law-abiding citizen without further supervision.

205—13.2(906) Persons not eligible. A parolee convicted of a violation of Iowa Code section 709.3, 709.4, or 709.8 committed on or with a child shall not be discharged from parole until the term of the parolee's sentence expires.

These rules are intended to implement Iowa Code section 906.15.

[Filed 7/26/76, Notice 1/26/76—published 8/9/76, effective 9/13/76]

[Filed 2/7/79, Notices 10/4/78, 11/1/78—published 3/7/79, effective 4/11/79]

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

CHAPTER 14
EXECUTIVE CLEMENCY
[615—Ch 14 transferred to 205—Ch 5, IAB 2/22/89]

205—14.1(902) Interviews of inmates serving life terms. The board shall not grant a parole or work release to a Class “A” felon serving a life term unless the governor commutes the sentence to a term of years. Administrative rules relating to the parole and work release consideration of an inmate sentenced to an indeterminate term shall not apply to an inmate sentenced to a life term. The board shall interview a Class “A” felon serving a life term to determine whether to recommend that the governor commute the sentence to a term of years. The board shall recommend that the governor commute the sentence when the board concludes that the inmate should be considered for release on parole or work release. In making such a recommendation, the board shall also indicate the existence of any registered victims and communicate any opinions expressed by those victims regarding release of the inmate.

205—14.2(902) Review of inmates serving life terms. The board may, at its discretion, review the record of a Class “A” felon serving a life term.

205—14.3(914) Executive clemency applications.

14.3(1) Applications to the board.

a. A person convicted of a criminal offense may apply to the board for a recommendation to the governor for a reprieve, pardon, commutation of sentence, or remission of fines and forfeitures at any time following the person’s conviction.

b. An application for a pardon or commutation of sentence shall be on the form provided by the board. The form may be obtained by contacting the board’s business office.

c. An application for a reprieve or remission of fines and forfeitures shall be in writing.

d. The applicant shall submit the executive clemency application to the board’s business office.

14.3(2) Applications to the governor. Upon the request of the governor, the board shall take charge of all correspondence in reference to an executive clemency application filed with the governor and shall provide the governor with the board’s advice and recommendation.

14.3(3) Restoration of citizenship.

a. A person convicted of a criminal offense may apply for restoration of citizenship at any time following the discharge of the person’s sentence.

b. A person applying for restoration of citizenship shall submit the Executive Clemency Application form to the governor. This form may be obtained from the governor’s office or from the board. The governor shall obtain a recommendation regarding restoration of citizenship from the board.

205—14.4(914,902) Board investigation. The board may investigate an application or district department recommendation with respect to history, current situation, parole prospects and other pertinent matters. The board may consider the application or recommendation, transcripts of judicial proceedings and all documents submitted with the application, and other documents as the board determines is appropriate, and may interview public officials, victims, and witnesses and other individuals as the board determines is appropriate.

205—14.5(914,902) Executive clemency recommendations.

14.5(1) Decision.

a. The board shall recommend that the governor grant commutation of sentence to a Class “A” felon serving a life term when the board unanimously agrees that the inmate should be considered for release on parole. If the board does not unanimously agree, the board shall recommend that the governor not grant commutation of sentence.

b. The board shall recommend that the governor grant executive clemency to a person other than a Class “A” felon serving a life term when at least three members of the board agree that the person has

demonstrated that the person will become or continue to be a law-abiding citizen. If three members of the board do not agree, the board shall recommend that the governor not grant executive clemency.

14.5(2) *Notice of board recommendation.* The board shall give notice of an executive clemency recommendation to the office of the governor and, if requested, to the inmate or applicant.

14.5(3) *Board consideration following commutation.* The board shall consider the parole and work release prospects of an inmate whose sentence has been commuted by the governor.

14.5(4) *Executive clemency reconsiderations.*

a. The board may reconsider at any time a board recommendation to grant executive clemency that the governor has denied and returned to the board. The procedures for reviewing an executive clemency application shall apply to the reconsideration of a denied recommendation.

b. The board may refile the recommendation with the governor or withdraw the recommendation.

205—14.6(902) Commutation procedure for Class “A” felons.

14.6(1) *Initial review.* The board of parole, or its designee, will initially review an application for commutation to determine whether the inmate is eligible to apply for commutation pursuant to Iowa Code section 902.2. If the inmate is not eligible to apply for commutation pursuant to Iowa Code section 902.2, the board shall return the application to the governor and notify the governor of the reasons.

14.6(2) *Parole board commutation investigation process.*

a. If the applicant is eligible to apply for commutation pursuant to Iowa Code section 902.2, the board shall conduct an investigation pursuant to that section and subrule 14.6(2).

b. The board may consider any documents the board deems appropriate including, but not limited to, the application and attached documents, transcripts of judicial proceedings, corrections information, and written recommendations, statements, and interviews of public officials, victims, and witnesses.

c. The board shall interview the applicant, pursuant to Iowa Code section 902.2, prior to submitting its recommendation to the governor. The board may interview any other person the board deems appropriate including, but not limited to, public officials, victims, and witnesses. The board may conduct any interview, including the interview of the applicant, through electronic means.

d. The board shall attempt to provide notice of the commutation investigation to any individual who would qualify as a victim under Iowa’s victim notification law. Notice shall be by regular mail to the last-known address. The notice shall provide a specified amount of time for the victim to provide a statement to the board regarding the application for commutation.

e. The board may utilize the resources of the department of public safety for assistance with any part of its investigation.

f. The board may hold a public hearing to receive comments from the general public on an application for commutation. The determination to hold a public hearing to receive public comments is solely at the discretion of the board.

14.6(3) *Recommendation and report.*

a. The board shall vote on a recommendation regarding the application. Any decision to recommend commutation shall be by unanimous vote. The board may continue the matter until such time as the board may determine by majority vote.

b. The board may consider any factor it deems appropriate when considering commutation including, but not limited to, the nature and circumstances of the crime, the number of years the applicant has served, the applicant’s previous criminal record, the applicant’s conduct while confined, the impact on the victim, and the public interest.

c. The board shall prepare a written report of its findings and recommendations and forward its report to the governor.

14.6(4) *Board consideration following commutation.* The board shall consider the parole and work release prospects of any inmate whose life sentence has been commuted by the governor. The grant of commutation does not require the board to grant parole or work release. The board shall consider parole or work release pursuant to the standards in 205—Chapter 8.

These rules are intended to implement Iowa Code sections 902.2, 902.4, and 904A.4(7) and chapter 914.

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed emergency 6/8/00—published 6/28/00, effective 6/8/00]

[Filed 9/12/00, Notice 6/28/00—published 10/4/00, effective 11/8/00]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

CHAPTER 15
APPEAL OF DECISIONS
[Prior to 2/22/89, Parole, Board of[615] Ch 9]

205—15.1(17A) General. An inmate, parolee, or work releasee may appeal any action of the board staff or board that affects that person except a decision to schedule a hearing or a work release transfer hearing decision, the denial of an appeal, or the decision to conduct an appearance by electronic means, or the revocation of parole which shall be appealed according to the procedure indicated in rule 205—11.8(908).

205—15.2(17A) Grounds. The general grounds for an appeal include that the board action is:

1. In violation of constitutional or statutory provisions;
2. In excess of the statutory authority of the board;
3. In violation of a board rule;
4. Made upon unlawful procedure;
5. Affected by other error of law;
6. Unsupported by evidence or based on incorrect or incomplete information which, if correct or complete, might have resulted in a different action;
7. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of decision.

205—15.3(17A) Filing an appeal.

15.3(1) An appeal shall be filed in writing and shall state:

- a. The nature of the board action which is the subject of the appeal.
- b. The particular agency action which is the subject of the appeal.
- c. The grounds on which relief is sought.
- d. The relief sought.

15.3(2) All grounds shall be included in the same appeal, and all necessary documents and information shall be attached to the appeal.

15.3(3) The appeal shall be submitted to the business office. An appeal must be received at the parole board office, or be postmarked, within ten days of the receipt of notice of the action appealed. The board is not required to consider untimely appeals.

205—15.4(17A) Board review and decision. The board of parole, a designee of the board or a panel of three or more members of the board shall review the appeal. The chairperson or designee or the panel may affirm, modify or reverse the action being appealed or may defer the action for further consideration, including granting the inmate, parolee, or work releasee an appearance before the board. The board shall give notice to the inmate, parolee, or work releasee of its decision.

205—15.5(17A) Other appearances before the board. An inmate, parolee, or work releasee may request an appearance before the board by submitting a written request to the business office or a board liaison officer. A member of the board may grant the request for an appearance.

205—15.6(21) Electronic appearances. The board may require an inmate, parolee, or work releasee who has been granted an appearance before the board to appear by electronic means.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 7/26/76, Notice 1/26/76—published 8/9/76, effective 9/13/76]

[Filed 2/7/79, Notices 10/4/78, 11/1/78—published 3/7/79, effective 4/11/79]

[Filed 9/23/82, Notice 7/7/82—published 10/13/82, effective 11/19/82]

[Filed 2/6/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]

[Filed emergency 7/3/97—published 7/30/97, effective 7/3/97]

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]

CHAPTER 16
WAIVER AND VARIANCE RULES

205—16.1(17A) Definition. For purposes of this chapter, “a waiver or variance” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

205—16.2(17A) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. 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.

205—16.3(17A) Applicability. 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.

205—16.4(17A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 16.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
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
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.

205—16.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

16.5(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.

16.5(2) Other. If the petition does not relate to a pending contested case, the petition may be submitted to the board’s executive director.

205—16.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 16.4(17A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the regulated activity affected by the proposed waiver, including a description of any notices of violation, contested case hearings, or investigative reports relating to the regulated activity within the past five years.
6. Any information known to the requester regarding the board’s treatment of similar cases.

7. 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 granting of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

205—16.7(17A) 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 the board's executive director, a committee of the board, or a quorum of the board.

205—16.8(17A) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, 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. 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 provide a written statement to the board attesting that notice has been provided.

205—16.9(17A) 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 rule or order or is required to do so by statute.

205—16.10(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

16.10(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.

16.10(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 board rule.

16.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

16.10(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.

16.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

16.10(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.

16.10(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable 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.

16.10(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.

16.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted 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.

205—16.11(17A) 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 waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

205—16.12(17A) Summary reports. Semiannually, the board shall prepare a summary report 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 these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

205—16.13(17A) 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 hearing, the board issues an order finding any of the following:

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
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
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

205—16.14(17A) 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 chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

205—16.15(17A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

205—16.16(17A) Judicial review. Judicial review of a 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 chapter 17A.

[Filed 6/4/04, Notice 4/28/04—published 6/23/04, effective 7/28/04]