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

In addition to the changes adopted by agencies, the replacement pages may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index and for the preliminary sections of the IAC: General Information about the IAC, Chapter 17A of the Code of Iowa, Style and Format of Rules, Table of Rules Implementing Statutes, and Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

NOTE: Please review the "Preface" for both the Iowa Administrative Code and Biweekly Supplement and follow carefully the updating instructions.

The boldface entries in the left-hand column of the updating instructions correspond to the tab sections in the IAC Binders.

Obsolete pages of IAC are listed in the column headed "Remove Old Pages." New and replacement pages in this Supplement are listed in the column headed "Insert New Pages." It is important to follow instructions in both columns.

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UPDATING INSTRUCTIONS
June 2, 1999, Biweekly Supplement

[Previous Supplement dated 5/19/99]

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*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

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SOIL CONSERVATION DIVISION[27]

[Renamed Soil Conservation Division[27] under the Agriculture and Land Stewardship Department[21] "umbrella"]

CHAPTERS 8 and 9
Reserved

CHAPTER 10
IOWA FINANCIAL INCENTIVE PROGRAM FOR SOIL EROSION CONTROL

CHAPTER 11
CONSERVATION PRACTICES REVOLVING LOAN FUND

CHAPTER 12
WATER PROTECTION PRACTICES—WATER PROTECTION FUND

CHAPTER 1
REGIONS OF REPRESENTATION FOR STATE SOIL CONSERVATION COMMITTEE FARMER MEMBERS

27—1.1(161A) Scope. This chapter delineates the regional boundaries from which the six farmer members of the state soil conservation committee shall be appointed. The three members representing the mining industry, cities and towns, and tree farming shall be selected from the state at large.

27—1.2(161A) Regions of representation. The farmer members of the state soil conservation committee shall be selected from the northwest, north central, northeast, southwest, south central, and southeast regions of the state.

1.2(1) *Northwest region.* The northwest region shall contain the counties of Buena Vista, Calhoun, Cherokee, Clay, Dickinson, Emmet, Ida, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, and Woodbury.

1.2(2) *North central region.* The north central region shall contain the counties of Boone, Butler, Cerro Gordo, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Kossuth, Marshall, Mitchell, Story, Tama, Webster, Winnebago, Worth, and Wright.

1.2(3) *Northeast region.* The northeast region shall contain the counties of Allamakee, Benton, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Howard, Jackson, Jones, Linn, and Winneshiek.

1.2(4) *Southwest region.* The southwest region shall contain the counties of Adair, Adams, Audubon, Carroll, Cass, Crawford, Fremont, Greene, Guthrie, Harrison, Mills, Monona, Montgomery, Page, Pottawattamie, Shelby, and Taylor.

1.2(5) *South central region.* The south central region shall contain the counties of Appanoose, Clarke, Dallas, Decatur, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Poweshiek, Ringgold, Union, Warren, and Wayne.

1.2(6) *Southeast region.* The southeast region shall contain the counties of Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jefferson, Johnson, Keokuk, Lee, Louisa, Muscatine, Scott, Van Buren, Wapello, and Washington.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 12/8/89, Notice 10/4/89—published 12/27/89, effective 1/31/90]
[Filed 11/8/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]

CHAPTER 2
OPERATION OF STATE SOIL CONSERVATION COMMITTEE

27—2.1(161A) Scope. This chapter governs the conduct of business by the state soil conservation committee. Rule-making proceedings held as part of committee meetings and contested case proceedings involving the committee are consistent with Iowa Code chapter 17A.

27—2.2(161A) Time of meetings. The committee meets monthly, generally the first Thursday of each month. The chairperson or a majority of the committee may establish meetings at more frequent intervals.

27—2.3(161A) Place of meetings. Meetings are held in the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa, or at other locations as appropriate. The meeting place will be specified in the agenda.

27—2.4(161A) Notification of meetings. The director of the soil conservation division shall provide public notice of all meeting dates, locations, and tentative agenda.

2.4(1) *Form of notice.* Notice of meetings is given by posting the tentative agenda and by distribution upon request. The agenda lists the time, date, place, and topics to be discussed at the meeting. The agenda shall include an opportunity for the public to address the committee on any issue related to the duties and responsibilities of the committee, except as otherwise provided in these rules.

2.4(2) *Posting of agenda.* The tentative agenda for each meeting will be posted at the division's offices on the second floor, Henry A. Wallace Building, normally at least five days prior to the meeting. The agenda will be posted at least 24 hours prior to the meeting, unless, for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

2.4(3) *Distribution of agenda.* Agenda will be mailed to anyone who files a request with the director. The request should state whether the agenda for a particular meeting is desired, or whether the requester desires to be on the division's mailing list to receive the agenda for all meetings of the state soil conservation committee.

2.4(4) *Amendment to agenda.* Any amendments to the agenda after posting and distribution under subrules 2.4(2) and 2.4(3) will be posted, but will not be mailed. The amended agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The committee may adopt amendments to the agenda at the meeting only if good cause exists requiring expeditious discussion or action on such matters. The reasons and circumstances necessitating such agenda amendments, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

2.4(5) *Supporting material.* Written materials provided to the committee with the agenda may be examined and copied as provided in the public information rules of the department. The director may require a fee to cover the reasonable cost to the division to provide the copies, in accordance with rules of the department.

27—2.5(161A) Attendance and participation by the public.

2.5(1) *Attendance.* All meetings are open to the public. The committee may exclude the public from portions of the meeting only in accordance with Iowa Code section 21.5.

2.5(2) *Participation.*

a. *Items on agenda.* Presentations to the committee may be made at the discretion of the chairperson.

b. *Items not on agenda.* Iowa Code section 21.4 requires the committee to give notice of its agenda. The committee will not take action on a matter not on the agenda, except in accordance with subrule 2.4(4). Presentations to the committee on subjects not on the agenda may be made at the discretion of the chairperson. Persons who wish the committee to take action on a matter not on the agenda should file a request with the director to place that matter on the agenda of a subsequent meeting.

c. *Meeting decorum.* The chairperson may limit participation as necessary for the orderly conduct of agency business.

2.5(3) *Use of cameras and recording devices.* Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order the use of these devices be discontinued if they cause interference and may exclude those persons who fail to comply with that order.

27—2.6(161A) Quorum and voting requirements.

2.6(1) *Quorum.* Two-thirds of the members of the committee constitutes a quorum.

2.6(2) *Voting.* The concurrence of a majority of the committee members is required to determine any matter before the committee for action, except for a vote to close a meeting which requires the concurrence of two-thirds of the members of the committee present.

27—2.7(161A) Conduct of meeting.

2.7(1) *General.* Meetings will be conducted in accordance with Robert's Rules of Order unless otherwise provided in these rules. Voting shall be by voice or by roll call. Voting shall be by voice unless a voice vote is inconclusive, a member of the committee requests a roll call, or the vote is on a motion to close a portion of a meeting. The chairpersons shall announce the result of the vote.

2.7(2) *Voice votes.* All committee members present should respond when a voice vote is taken. The response shall be aye, nay, or abstain.

a. All members present shall be recorded as voting aye on any motions when there are no nay votes or abstentions heard.

b. Any member who abstains shall state at the time of the vote the reason for abstaining. The abstention and the reason for it shall be recorded in the minutes.

2.7(3) *Provisions of information.* The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

27—2.8(161A) Minutes, transcripts, and recordings of meetings.

2.8(1) *Recordings.* The director shall record by mechanized means each meeting and shall retain the recording for at least one month. Recordings of closed sessions shall be sealed and retained at least one year.

2.8(2) *Transcripts.* The division does not routinely prepare transcripts of meetings. The division will have transcripts of meetings, except for closed sessions, prepared upon receipt of a request for a transcript and payment of a fee to cover the cost to the division of preparing the transcript.

2.8(3) *Minutes.* The director shall keep minutes of each meeting. Minutes shall be reviewed and approved by the committee and retained permanently by the director. The approved minutes shall be signed by the director and the committee chairperson.

27—2.9(161A) Officers and duties.

2.9(1) *Officers.* The officers of the committee are the chairperson and the vice chairperson.

2.9(2) *Duties.* The chairperson shall preside at the meetings and shall exercise the powers conferred upon the chairperson. The vice chairperson shall perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson.

27—2.10(161A) Election and succession of officers.

2.10(1) *Elections.* Officers shall be elected annually during June and shall assume office effective July 1.

2.10(2) *Succession.*

a. If the chairperson does not serve out the elected term, the vice chairperson shall succeed the chairperson for the remainder of the term. A special election shall be held to elect a new vice chairperson to serve the remainder of the term.

b. If the vice chairperson does not serve out the elected term, a special election shall be held to elect a new vice chairperson to serve the remainder of the term.

These rules are intended to implement Iowa Code chapter 161A.

[Filed 12/8/89, Notice 10/4/89—published 12/27/89, effective 1/31/90]

CHAPTER 3
CONTESTED CASE PROCEEDINGS AND PRACTICE

The uniform rules on contested case proceedings published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

27—3.1(17A,161A) Scope and applicability. In lieu of the words "(agency name)" insert "the Division of Soil Conservation, Department of Agriculture and Land Stewardship".

27—3.2(17A,161A) Definitions. Insert the following definitions in alphabetical order:

"Committee" means the state soil conservation committee established at Iowa Code section 161A.4.

"Department" means the department of agriculture and land stewardship.

"Director" means the director of the division of soil conservation, department of agriculture and land stewardship.

"Division" means the division of soil conservation, department of agriculture and land stewardship.

"Secretary" means the Iowa secretary of agriculture.

In lieu of the words "(designate official)" insert "person designated by the director to preside over a contested case including, but not limited to, an administrative law judge with the department of inspections and appeals". In lieu of the words "(agency name)" insert "the division of soil conservation, department of agriculture and land stewardship".

27—3.3(17A,161A) Time requirements.

3.3(2) Delete the words "or by (specify rule number)".

27—3.4(17A,161A) Requests for contested case proceeding. In lieu of the first paragraph, insert "Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question. If no time is specified in the agency action and there is no applicable rule or statute, then the written request for a contested case proceeding shall be filed in writing within 30 calendar days of the action or notice of the intended action the person wishes to contest."

27—3.5(17A,161A) Notice of hearing.

3.5(1) Delete paragraph "e. (other options)."

27—3.6(17A,161A) Presiding officer.

3.6(1) Delete the words "(or such other time period the agency designates)".

3.6(2) Delete the words "(or its designee)". Delete paragraphs "c" and "i" and reletter the subsequent paragraphs.

3.6(3) Delete the subrule and insert "The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed."

3.6(4) Delete the subrule and renumber the subsequent subrules.

27—3.12(17A,161A) Service and filing of pleadings and other papers.

3.12(3) In lieu of the words "(specify office and address)" insert "Director's Office, Division of Soil Conservation, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319". In lieu of the words "(agency name)" insert "division".

3.12(4) In lieu of the words "(designate office)" insert "director's office".

27—3.15(17A,161A) Motions.

3.15(4) Delete the words "(or other time period designated by the agency)".

3.15(5) In lieu of the words "(45 days)" insert "45 days". In lieu of the words "(15 days)" insert "15 days". In lieu of the words "(20 days)" insert "20 days".

27—3.16(17A,161A) Prehearing conference.

3.16(1) Delete the words "(or other time period designated by the agency)". In lieu of the words "(designate office)" insert "presiding officer".

27—3.17(17A,161A) Continuances.

3.17(1) Delete the words "(or other time period designated by the agency)".

27—3.22(17A,161A) Default.

3.22(5) Delete the words "(or other time specified by the agency)".

27—3.23(17A,161A) Ex parte communication.

3.23(8) In lieu of the words "(or disclosed)" insert "or disclosed".

3.23(10) In lieu of the words "(agency to designate person to whom violations should be reported)" insert "the division director or the director's designee".

27—3.24(17A,161A) Recording costs. In lieu of the words "(agency name)" insert "division".

27—3.25(17A,161A) Interlocutory appeals. In lieu of the words "(board, commission, director)" insert "director or the director's designee". In lieu of the words "(of the presiding officer)" insert "of the presiding officer". Delete the words "(or other time period designated by the agency)".

27—3.26(17A,161A) Final decision.

3.26(1) In lieu of the words "(the agency) (or a quorum of the agency)" insert "the division".

3.26(2) In lieu of the words "(agency name)" insert "division".

27—3.27(17A,161A) Appeals and review.

3.27(1) In lieu of the words "(board, commission, director)" insert "director or the director's designee". Delete the words "(or other time period designated by the agency)".

3.27(2) In lieu of the words "(board, commission, director)" insert "director or the director's designee". Delete the words "(or other time period designated by the agency)".

3.27(3) In lieu of the words "(agency name)" insert "division".

3.27(4) Delete the words "(or other time period designated by the agency)". In lieu of the words "(board, commission, director)" insert "director or the director's designee".

3.27(5) In lieu of the words "(agency name)" insert "division".

3.27(6) Delete the words "(or other time period designated by the agency)". In lieu of the words "(board, commission, director)" insert "director or the director's designee".

27—3.28(17A,161A) Applications for rehearing.

3.28(3) In lieu of the words "(agency name)" insert "division".

3.28(4) In lieu of the words "(agency name)" insert "division".

27—3.29(17A,161A) Stays of agency action.

3.29(1) In lieu of the words "(agency name)" insert "division". In lieu of the words "(board, commission, director)" insert "director or the director's designee".

3.29(2) In lieu of the words "(board, commission, director, as appropriate)" insert "director or the director's designee".

3.29(3) In lieu of the words "(agency name)" insert "division".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 161A.

[Filed 5/12/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

CHAPTER 4
DECLARATORY ORDERS

The uniform rules on declaratory orders published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

27—4.1(17A,161A) Petition for declaratory order. In lieu of the words "(designate agency)" the first time the words are used, insert "division of soil conservation, department of agriculture and land stewardship (hereinafter referred to as "the division")". In lieu of the words "(designate agency)" the subsequent times the words are used, insert "division". In lieu of the words "(designate office)" insert "Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319." In lieu of the words "(AGENCY NAME)" insert "DIVISION OF SOIL CONSERVATION, DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP".

27—4.2(17A,161A) Notice of petition. In lieu of the words "___days (15 or less)" insert "15 days". In lieu of the words "(designate agency)" insert "division".

27—4.3(17A,161A) Intervention.

4.3(1) In lieu of the words "____ days" insert "20 days".

4.3(2) In lieu of the words "(designate agency)" insert "the division".

4.3(3) In lieu of the words "(designate office)" insert "the division director's office". In lieu of the words "(designate agency)" insert "the division". In lieu of the words "(AGENCY NAME)" insert "DIVISION OF SOIL CONSERVATION, DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP". Delete paragraph "6" and insert in lieu thereof "6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding."

27—4.4(17A,161A) Briefs. In lieu of the words "(designate agency)" insert "division".

27—4.5(17A,161A) Inquiries. In lieu of the words "(designate official by full title and address)" insert "the Director of the Division of Soil Conservation, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".

27—4.6(17A,161A) Service and filing of petitions and other papers.

4.6(2) In lieu of the words "(specify office and address)" insert "the Director of the Division of Soil Conservation, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319". In lieu of the words "(agency name)" insert "division".

4.6(3) In lieu of the words "(uniform rule on contested cases X.12(17A))" insert "rule 27—3.12(17A,161A)".

27—4.7(17A,161A) Consideration. In lieu of the words "(designate agency)" insert "division".

27—4.8(17A,161A) Action on petition.

4.8(1) In lieu of the words "(designate agency head)" insert "the director of the division of soil conservation".

4.8(2) In lieu of the words and numbers "(contested case uniform rule X.2(17A))" insert "rule 27—3.2(17A,161A)".

27—4.9(17A,161A) Refusal to issue order.

4.9(1) In lieu of the words "(designate agency)" insert "division".

27—4.12(17A,161A) Effect of a declaratory order. In lieu of the words "(designate agency)" insert "division". Delete the words "(who consent to be bound)".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 161A.

[Filed 5/12/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

CHAPTER 5
AGENCY PROCEDURE FOR RULE MAKING

The uniform rules on agency procedure for rule making published in the first volume of the Iowa Administrative Code are adopted by reference with the following amendments:

27—5.1(17A,161A) Applicability. In lieu of the word "agency" insert "the division of soil conservation, department of agriculture and land stewardship (hereinafter referred to as "the division")".

27—5.3(17A,161A) Public rule-making docket.

5.3(2) In lieu of the words "(commission, board, council, director)" insert "director of the division of soil conservation".

27—5.4(17A,161A) Notice of proposed rule making.

5.4(3) In lieu of the words "(specify time period)" insert "one year".

27—5.5(17A,161A) Public participation.

5.5(1) In lieu of the words "(identify office and address)" insert "the Director of the Division of Soil Conservation, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".

5.5(5) In lieu of the words "(designate office and telephone number)" insert "the division director's office at (515)281-6146".

27—5.6(17A,161A) Regulatory analysis.

5.6(2) In lieu of the words "(designate office)" insert "the division director's office".

27—5.10(17A,161A) Exemptions from public rule-making procedures.

Subrule 5.10(2) is deleted and subsequent subrules are renumbered.

27—5.11(17A,161A) Concise statement of reasons.

5.11(1) In lieu of the words "(specify the office and address)" insert "the Director of the Division of Soil Conservation, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319".

27—5.13(17A,161A) Agency rule-making record.

5.13(2) In lieu of the words "(agency head)" insert "director of the division of soil conservation".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 161A.

[Filed 5/12/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

ARCHITECTURAL EXAMINING BOARD[193B]

CHAPTER 1
DESCRIPTION OF ORGANIZATION
[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

193B—1.1(544A,17A) Duties. The board shall enforce the provisions of Iowa Code chapter 544A and shall maintain a roster of all registered architects and a roster of all business entities authorized to practice architecture in the state.

1.1(1) *President.* The president shall preside at all meetings, shall appoint all committees, shall sign all certificates, and shall otherwise perform all duties pertaining to the office of the president.

1.1(2) *Vice president.* The vice president shall, in the absence or incapacity of the president, exercise the duties and possess the powers of the president. The vice president shall sign all certificates.

1.1(3) *Secretary.* The secretary shall sign all certificates.

1.1(4) *Administrative secretary.* The division may employ an administrative secretary who will maintain all necessary records of the board and perform all duties in connection with the operation of the board office. The division administrator or designee shall sign vouchers for payment of board obligations.

193B—1.2(544A,17A) Office of the board. The mailing address of the board shall be: Iowa Architectural Examining Board, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

193B—1.3(544A,17A) Meetings. Meetings of the board are regularly scheduled for the second Tuesday of January, March, May, July, September, and November. Meetings may be postponed, canceled, or rescheduled by the president for the convenience of the board. Board members shall be informed of meetings by the administrative secretary in writing at least one week before the scheduled date of the meeting.

193B—1.4(544A,17A) Certificates. Certificates issued to successful applicants shall contain the registrant's name, state registration number and the signatures of the board president, vice president and secretary. All registrations are renewable biennially on July 1, with registrants whose last names begin with the letters A-K renewing in even-numbered years and registrants whose last names begin with the letters L-Z renewing in odd-numbered years. All registrants will receive a notice of renewal and a notice of certification of current registration.

1.4(1) A person who fails to renew the certificate of registration by the expiration date, but does so within 30 days following its expiration date, shall be allowed to do so.

1.4(2) The board shall give notice by certified mail, return receipt requested, to the holder of a certificate of registration who has failed to renew. The certificate of registration may be reinstated in accord with rule 193B—2.3(544A,17A).

193B—1.5(544A,17A) Definitions. The following definitions apply as used in Iowa Code chapter 544 and rules of the architectural examining board, unless the context otherwise requires.

"Accessory buildings" means one or more buildings separate from, but accessory to, a main building, including, but not limited to, a garage or storage building serving a main building.

"Agricultural building" means a structure designed to house farm implements, hay, grain, poultry, livestock or other horticulture products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed or treated or packaged; nor shall it be a place used by the public.

"Alter" or *"alteration"* means any change, addition or modification in construction or occupancy.

"Basement" means any floor level below the first story in a building, except that a floor level in a building having only one floor shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

"Commercial" and *"Commercial use"* mean a building used for the buying, selling or exchange of goods and services, including gasoline service stations; garages where no repair work is done except exchange of parts and maintenance requiring no open flame, welding or use of Class I, II or III-A liquids; drinking and dining establishments having an occupant load of less than 50; wholesale and retail stores; office buildings; printing plants; factories and workshops using material not highly flammable or combustible; paint stores without bulk handling; and buildings or portions of buildings having rooms used for educational purposes beyond the twelfth grade, with fewer than 50 occupants in any room. Commercial does not include the other uses described herein: accessory buildings, factory-built buildings, governmental, industrial, light industrial, places of assembly, warehouses, educational, institutional, and residential.

"Contact hour" means one continuous instructional hour spent in either structured educational activities or individually planned educational activities intended to increase the architect's knowledge and competence in public protection subjects and related practice subjects.

"Dwelling unit" means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, or cooking and sanitation for not more than one family, or a congregate residence for ten or fewer persons.

"Educational use" means a building used for educational purposes through the twelfth grade for more than 12 hours per week or more than 4 hours in any one day, and any building used for day-care purposes for more than six children.

"Factory-built buildings" means buildings which have been designed, engineered, fabricated and wholly or partly assembled in a manufacturing facility for assembly and installation on a building site. A preengineered building utilizing standard building components assembled on the building site is not considered a "factory-built" building. Such factory-built buildings, in order to qualify for the exception established by Iowa Code section 544A.18, must either:

1. Not exceed limitations on size or use established by Iowa Code section 544A.18, or
2. The seal applied by a professional engineer or architect shall apply to the entire assembly, not a specific element of the assembly.

"Family dwelling unit" is any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, for not more than one family.

"Governmental use" means a building or portion of a building owned or occupied by a municipal, county, state, federal, or other public agency including, but not limited to, municipal fire and police stations and libraries.

"Gross floor area" means the aggregate floor area of an entire building enclosed by and including the surrounding exterior walls, and including the aggregate total area of existing, new and additional construction which is physically connected by enclosed space. Basements and below-grade spaces shall be included when calculating gross floor area regardless of the use of such space.

"Habitable space (room)" means a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

"Individually planned educational activities" means educational activities in which the teaching methodology primarily consists of the architect personally addressing public protection subjects or related practice subjects which are not systematically presented by others, including reading or writing articles on such subjects, studying or researching building types, designs or building systems, rendering services to the public, advancing the profession's and the public's understanding of the practice of architecture and the like.

"Industrial use" means a building used for the manufacturing, fabrication, or assembly of goods or materials, including aircraft hangars where no repair work is done except exchange of parts and maintenance requiring no open flame, welding, or the use of Class I or II liquids; open parking garages; helistops; ice plants; power plants; pumping plants; cold storage and creameries; and factories and workshops using noncombustible and nonexplosive materials.

"Institutional use" includes nurseries for the full-time care of children under the age of six accommodating more than five persons, hospitals, sanitariums, nursing homes, homes for children six years of age or over accommodating more than five persons, mental hospitals, mental sanitariums, jails, prisons, reformatories, and buildings where personal liberties of inmates are similarly restrained.

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

"Light industrial buildings" means buildings used solely to house an industrial use, not more than one story in height and not exceeding 10,000 square feet in gross floor area, or not more than two stories in height and not exceeding 6,000 square feet in gross floor area.

"NCARB Handbook for Interns and Architects" means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for examination and registration as an architect and is available through the National Council of Architectural Registration Boards, 1735 New York Avenue N.W., Washington, D.C. 20006, the Iowa Architectural Examining Board or the state law library.

"Nonstructural alterations" means modifications to an existing building which do not include any changes to structural members of a building, or do not modify means of egress, handicap accessible routes, fire resistivity or other life safety concerns.

"Not engaged in active practice" means that an architect is not engaged in the practice of architecture or earning monetary compensation from the providing of professional architectural services in any licensing jurisdiction of the United States or a foreign country.

"Occupancy" means the purpose for which a building, or part thereof, is used or intended to be used.

"Office use" means a building housing a commercial use.

"Official copy" means final technical submission for purposes of required approvals.

"Outbuildings" has the same meaning as "accessory buildings."

"Place of assembly of people or public gathering" means a building or a portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking or dining or awaiting transportation.

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

"Public protection subjects" means technical and professional subjects which the board deems appropriate to safeguard directly the public's health, safety and welfare. Such subjects include building design, environmental or land use analyses, life-safety, architectural programming, site and soils analyses, accessibility, structural systems considerations, lateral forces, building codes, evaluation and selections of building systems, products or materials, construction methods, contract documentation, construction administration and the like.

"Related practice subjects" means technical and professional subjects other than public protection subjects which the board deems appropriate to safeguard indirectly the public's health, safety and welfare. Such subjects include building cost analysis, construction contract negotiation, construction phase office procedures, project management, review of state registration laws including rules of professional conduct and the like.

"Residential use" includes hotels, apartment houses, dwellings, and lodging houses.

"Retired from active practice" has the same meaning as "not engaged in active practice."

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of the building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet (1829 mm) above grade for more than 50 percent of the total perimeter or is more than 12 feet (3658 mm) above grade at any point, such usable or unused under-floor space shall be considered a story.

"Story, first" means the lowest story of a building which qualifies as a story, as defined herein, except that the floor level in a building having only one floor level shall be classified as a first story, provided such floor is not more than 4 feet (1219 mm) below grade for more than 50 percent of the total perimeter, or not more than 8 feet (2438 mm) below grade at any point.

"Structural members" consists of building elements which carry an imposed load of weight and forces in addition to their own weight, including but not limited to loads imposed by forces of gravity, wind, and earthquake. Structural members include, but are not limited to, footings, foundations, columns, load-bearing walls, beams, girders, purlins, rafters, joists, trusses, lintels, and lateral bracing.

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

"Structured educational activities" means educational activities in which the teaching methodology consists primarily of the systematic presentation of public protection subjects or related practice subjects by qualified individuals or organizations including monographs, courses of study taught in person or by correspondence, organized lectures, presentations or workshops and other means through which identifiable technical and professional subjects are presented in a planned manner.

"Warehouses" and *"warehouse use"* mean a building used for the storage of goods or materials.

These rules are intended to implement Iowa Code sections 544A.5, 544A.8 to 544A.10, and 272C.4.

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CHAPTER 2
REGISTRATION

[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

193B—2.1(544A,17A) Application for registration. Applicants for registration are required to make application to the National Council of Architectural Registration Boards, 1735 New York Avenue Northwest, Washington, D.C. 20006 for a council record. A completed state application form and a completed council certificate record shall be filed in the board office before an application will be considered by the board. If prerequisite to examination, the state application form and the council record shall be filed in the board office prior to the date scheduled to take the examination.

2.1(1) The board, by approval of three of its members who are registered architects, may waive examination requirements for architects registered during the current year in another state or country where the qualifications prescribed at the time of registration were equal to those prescribed in Iowa. For the purpose of determining substantially equivalent qualifications, applicants shall be deemed to have met the "Training Requirements for Intern-Architect Development Program (IDP)" requirement regardless of the date of completion of the required experience, provided the experience was completed prior to filing an application for Iowa registration. The board shall find probable cause for disciplinary action if the registrant's registration in any other state is revoked for statutory reasons or incompetence.

2.1(2) Except as provided in the preceding paragraph, to qualify for registration, all applicants shall pass all divisions of the "Architect Registration Examination" (ARE) prepared and issued by the National Council of Architectural Registration Boards (NCARB). Applicants who have previously passed any portion of formerly required NCARB examinations will be granted credit for those portions passed in accordance with procedures established by NCARB. Divisions of the examination may be passed or failed separately in accordance with procedures established by NCARB.

2.1(3) Practice by business entities.

a. Before engaging in the practice of architecture in this state, a foreign or domestic business corporation, a foreign professional corporation, a partnership, or sole proprietorship shall acquire an "Authorization to Practice Architecture as a Business Entity" from the board as provided in Iowa Code section 544A.21.

b. A domestic professional corporation shall file with the board a copy of its annual report to the secretary of state.

c. Application for the authorization shall be made to the board on forms prescribed by the board. The application shall include but not be limited to the following:

(1) Name and address of the business entity;

(2) Type of business entity;

(3) Names, addresses, and titles of the registered agent if a corporation, and of all officers, directors, partners, beneficial owners, or other principals of the business entity, or of the sole proprietor;

(4) Name and address of each registered architect in responsible charge of the practice of architecture on behalf of the business entity in the state of Iowa;

(5) Signature of an officer of a corporation, a partner of a partnership, or the sole proprietor.

d. The "Authorization to Practice Architecture as a Business Entity" will expire on June 30 of each year. Renewal application forms will be provided by the board. The form will request information substantially similar to the information requested in subrule 2.1(3)"*c.*"

e. A business entity that fails to renew the authorization by the expiration date, but does so within 30 days following its expiration date, shall be allowed to do so with the payment of a $5 penalty.

(1) The board shall give notice by certified mail, return receipt requested, to the holder of an authorization who has failed to renew the authorization. If the holder fails to renew within 30 days of receipt of the notice, the certificate of registration shall be canceled.

(2) The authorization may be reinstated by completing all of the following:

1. Paying a reinstatement fee of $100.
2. Paying the business entity renewal fee.
3. Submitting the application form required by the board.

(3) A business entity that loses its authorization by cancellation or other board action shall immediately cease to conduct architectural practice in the state of Iowa.

193B—2.2(544A,17A) Admittance to examination. To be admitted to the examination, an applicant for registration shall have completed eligibility requirements of education and training standards for NCARB certification and attained an NCARB council record.

2.2(1) All eligibility requirements shall have been verified by the council record and satisfied in accordance with the NCARB Handbook for Interns and Architects. The Handbook is available through the National Council of Architectural Registration Board (NCARB), 1735 New York Avenue, N.W., Washington, D.C. 20006, the Iowa architectural examining board or the state law library. Eligibility requirements include a professional degree from a program accredited by the National Architectural Accrediting Board (NAAB) or the Canadian Architectural Certification Board (CACB) and completion of IDP (Intern Development Program).

2.2(2) Documentation of training standards shall be submitted on "IDP report" forms, published by NCARB, verified by signatures of registered architects serving as (a) a professional sponsor who has been the intern-architect's employer or who has been an architect in the firm who has substantial responsibility and has been assigned by the firm to act in this capacity; and (b) a professional advisor who is a registered architect, usually outside the intern's firm, with whom the intern has met for guidance and evaluation of progress. The report form shall be completed to demonstrate attainment of an aggregate of the minimum number of value units in each training area. To receive credit, training units must have been earned no longer than five years prior to the date of establishing an NCARB council record.

193B—2.3(544A,17A) Reinstatement. An expired certificate of registration can be reinstated by completing all of the following:

1. Paying a reinstatement fee of $50 per year of expired registration, up to a maximum of $350.
2. Paying the current renewal fee.
3. Submitting documented evidence of completion of 12 contact hours (8 hours in public protection subjects) of continuing education for each year of expired registration in compliance with requirements in 193B—Chapter 3 up to a maximum of 48 contact hours (32 hours in public protection subjects).

2.3(1) Rescinded IAB 12/2/98, effective 1/6/99.

2.3(2) Rescinded IAB 12/2/98, effective 1/6/99.

193B—2.4(544A,17A) Examination. Examinations for registration as an architect shall be conducted by the board or its authorized representative.

2.4(1) *Content and grading of the examination.* The board shall make use of the "Architect Registration Examination" (ARE) prepared and graded by NCARB under a plan of cooperation with the boards of all states and territories of the United States.

2.4(2) *Testing service.* The board may make use of a testing service selected by NCARB to administer the examination, provided the examination is held in at least one location within the boundaries of this state.

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CHAPTER 4
RULES OF CONDUCT
[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

193B—4.1(544A,17A) Rules of conduct. Failure by a registrant to adhere to the provisions of Iowa Code sections 272C.10 and 544A.13 and the following rules of conduct shall be grounds for disciplinary action.

4.1(1) *Competence.*

a. In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

b. In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of the regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of these laws and regulations.

c. An architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, are qualified by education, training and experience in the specific technical areas involved.

d. No person shall be permitted to practice architecture if, in the board's judgment upon receipt of medical testimony or evidence, the person's professional competence is substantially impaired by physical or mental disabilities.

4.1(2) *Conflict of interest.*

a. An architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosures and agreement to be in writing) by all interested parties.

b. If an architect has any business association or direct or indirect financial interest which is substantial enough to influence judgment in connection with the architect's performance or professional services, the architect shall fully disclose, in writing, to the client or employer the nature of the business association or financial interest, and if the client or employer objects to the association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

c. An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing the products.

d. When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

4.1(3) *Full disclosure.*

a. An architect, making public statements on architectural questions, shall disclose when compensation is being received for making the statements.

b. An architect shall accurately represent to a prospective or existing client or employer the architect's qualifications and the scope of the architect's responsibility in connection with work for which the architect is claiming credit.

c. If, in the course of work on a project, an architect becomes aware of a decision taken by the employer or client against the architect's advice which violates applicable state or municipal building laws and regulations and which will, in the architect's judgment, adversely affect the safety to the public of the finished project, the architect shall:

1. Report the decision to the local building inspector or other public official charged with enforcement of the applicable state or municipal building laws and regulations.

2. Refuse to consent to the decisions, and,

3. In circumstances where the architect reasonably believes that other decisions will be taken, notwithstanding the architect's objection, terminate the architect's services with reference to the project.

d. An architect shall not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with application for registration or renewal of registration.

e. An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience or character.

f. An architect possessing knowledge of a violation of these rules by another architect shall report the knowledge to the board.

4.1(4) *Compliance with laws.*

a. An architect shall not, in the conduct of architectural practice, knowingly violate any state or federal criminal law.

b. An architect shall neither offer nor make any payment to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

c. An architect shall comply with the registration laws and regulations governing the architect's professional practice in any United States jurisdiction.

4.1(5) *Professional conduct.*

a. Each office maintained for the preparation of drawings, specifications, reports or other professional work shall have an architect resident regularly employed in that office having responsible control of such work.

b. An architect shall not sign or seal drawings, specifications, reports or other professional work for which the architect does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of professional work prepared by the architect's consultants, registered under this or another professional registration law of this jurisdiction, the architect may sign or seal that portion of the professional work if the architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

c. An architect shall neither offer nor make any gifts to any public official with the intent of influencing the official's judgment in connection with a project in which the architect is interested.

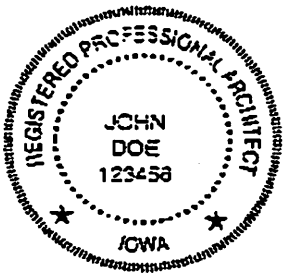
d. An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

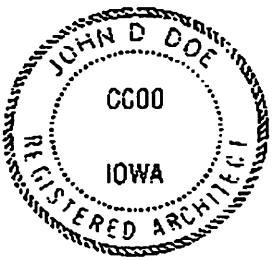
Failure by a registrant to adhere to these rules of conduct shall cause the registration to be reviewed by the board and shall, at the discretion of the board, be cause for a reprimand, suspension or revocation of the registration.

4.1(6) *Seal and certificate of responsibility.*

a. Each architect shall procure a seal with which to identify all technical submissions issued by the architect for use in Iowa as provided in Iowa Code section 544A.28.

b. Description of seal: The diameter of the outside circle shall be approximately 1¾ inches. The seal shall include the name of the registered architect and the words "Registered Architect". The Iowa registration number and the word "Iowa" shall be included. The seal shall substantially conform to the samples shown below:





c. A legible rubber stamp or other facsimile of the seal may be used.

d. Each technical submission submitted to a building official, hereinafter referred to as the official copy, shall contain an information block on its first page or on an attached cover sheet for application of a seal by the architect in responsible charge and an information block for application of a seal by each professional consultant contributing to the technical submission. The seal and original signature shall be applied only to a final technical submission. Each official copy of a technical submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional shall be designated in the area provided in the information block, so that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block will substantially conform to the sample shown below:

SEAL	I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly registered architect under the laws of the state of Iowa. _____ Printed or typed name _____ Signature Pages or sheets covered by this seal: _____ _____ _____ _____ _____ Date Issued:

e. The information requested in each information block must be typed or legibly printed in permanent black ink except the signature shall be an original signature in permanent black ink on each official copy. The seal implies responsibility for the entire technical submission unless the area of responsibility is clearly identified in the information accompanying the seal.

f. It shall be the responsibility of the architect who signed the original submission to forward copies of all changes and amendments to the technical submission, which shall become a part of the official copy of the technical submission, to the public official charged with the enforcement of the state, county, or municipal building code. Such changes and amendments shall be accompanied by an additional information block or blocks with professional seals applied so as to clearly establish professional responsibility for the changes.

g. An architect is responsible for the custody and proper use of the seal. Improper use of the seal shall be grounds for disciplinary action.

h. The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the responsible control of the individual named on that seal.

4.1(7) *Communications.* An architect shall, when requested, respond to communications from the board within 30 days of the mailing of such communication by certified mail. Failure to respond to such communication may be grounds for disciplinary action against the architect.

This rule is intended to implement Iowa Code chapters 17A and 544A.

193B—4.2(272C) Impaired licensee review committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the Iowa architectural examining board establishes the impaired licensee review committee.

4.2(1) *Definitions.* The following definitions are applicable wherever such terminology is used in the rules regarding the impaired licensee review committee.

"Committee" means the impaired licensee review committee.

"Contract" means the written document establishing the terms for participation in the impaired licensee program prepared by the committee.

"Impairment" means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

"Licensee" means a person registered under Iowa Code chapter 544A.

"Self-report" means the licensee's providing written or oral notification to the board that the practitioner has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging the same from a second party.

4.2(2) *Purpose.* The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the board on the recovery or rehabilitation of licensees who self-report impairments.

4.2(3) *Composition of the committee.* The chairperson of the board shall appoint the members of the committee. The membership of the committee includes, but is not limited to:

a. One licensee, registered under Iowa Code chapter 544A;

b. One public member of the architectural examining board;

c. One licensed professional with expertise in substance abuse/addiction treatment programs.

4.2(4) *Eligibility.* To be eligible for participation in the impaired licensee recovery program, a licensee must meet all of the following criteria:

a. The licensee must self-report an impairment or suspected impairment directly to the office of the board.

b. The licensee must not have engaged in the unlawful diversion or distribution of controlled substances, or illegal substances;

c. At the time of the self-report, the licensee must not already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;

d. The licensee has not caused harm or injury to a client;

e. There is currently no board investigation of the licensee that the committee determines concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

f. The licensee has not been subject to a civil or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of architecture;

g. The licensee has provided truthful information and fully cooperated with the board or committee.

4.2(5) *Meetings.* The committee shall meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring.

4.2(6) *Terms of participation.* A licensee shall agree to comply with the terms for participation in the impaired licensee program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensee in writing.

4.2(7) *Noncompliance.* Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for the purpose of disciplinary action.

4.2(8) *Practice restrictions.* The committee may impose restrictions on the licensee's practice as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

4.2(9) *Limitations.* The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired licensee program. Participation in the program under the auspices of the committee shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the board for appropriate action.

4.2(10) *Confidentiality.* The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the impaired licensee program under the auspices of the committee in not a matter of public record.

This rule is intended to implement Iowa Code chapter 272C.

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CHAPTER 5
DISCIPLINARY ACTION

[Previously Ch 4; Ch 5, IAB 3/2/83]
[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

193B—5.1(544A,272C) Disciplinary action. The architectural examining board has authority in Iowa Code chapters 544A, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193B—5.2(544A,272C) Investigation of complaints. The board shall, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the president shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.

193B—5.3(544A,272C) Peer investigative committee. A peer investigative committee may be appointed by the president to investigate a complaint. The committee members will consist of one or more architects, serve at the discretion of the president, and shall have been registered to practice in Iowa for at least five years. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

193B—5.4(544A,272C) Investigation report. Upon completion of the investigation, the investigator(s) shall prepare for the board's consideration a report containing the position or defense of the registrant to determine what further action is necessary. The board may:

1. Order the matter be further investigated.
2. Allow the registrant who is the subject of the complaint an opportunity to appear before the committee for an informal discussion regarding the circumstances of the alleged violation.
3. Determine there is no probable cause to believe a disciplinary violation has occurred and close the case.
4. Determine there is probable cause to believe that a disciplinary violation has occurred.

193B—5.5(544A,272C) Informal discussion. If the board considers it advisable, or if requested by the affected registrant, the board may grant the registrant an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The registrant may be represented by legal counsel at the informal discussion. The registrant is not required to attend the informal discussion. By electing to attend, the registrant waives the right to seek disqualification based upon personal investigation of a board member or staff from participating in making a contested case decision or acting as a presiding officer in a later contested case proceeding. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

193B—5.6(544A,272C) Consent agreement. It is unlawful for a person not qualified by registration to engage in or offer to engage in the practice of architecture. The board in its discretion and in lieu of prosecuting a first offense of any of the offenses described in Iowa Code section 544A.15 may enter into a consent agreement with a violator, or with a person guilty of aiding or abetting a violator, which acknowledges the violation and the violator's agreement to refrain from any further violations. A representative of the board, designated by the president, and a designated staff person or an assistant attorney general may agree to negotiate a consent agreement. The proposed consent agreement must be presented to the board for approval and shall be binding if signed by the board president and the violator.

Failure to abide by the agreement is grounds for prosecution as a serious misdemeanor pursuant to Iowa Code section 544A.15.

193B—5.7(544A,272C) Consent order. The board may negotiate a settlement and enter into a consent order with an architect who acknowledges a violation of the statute or rules and agrees to refrain from any further violation, pursuant to Iowa Code section 544A.29. A representative of the board, designated by the president, and a designated staff person or an assistant attorney general may agree to negotiate a settlement. The proposed consent order must be presented to the board for approval and shall be binding if signed by the board president and the architect. Any board member who participates in negotiation of a consent order is not disqualified from participating in adjudication of the contested case. Consent to negotiation by the respondent constitutes waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, during settlement negotiations. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board president or designee.

193B—5.8(544A,272C) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense.

193B—5.9(17A) Time requirements.

5.9(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

5.9(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

193B—5.10(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

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

193B—5.11(544A,272C) Notice of hearing. The board's notice of hearing shall fix the time and place for hearing and shall contain those items specified in Iowa Code section 17A.12(2). The notice shall also contain the following:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved;
4. A short and plain statement of the matters asserted. If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
5. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and identification of parties' counsel where known;
6. Reference to the procedural rules governing conduct of the contested case proceeding;
7. Reference to the procedural rules governing informal settlement;
8. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and
9. A statement requiring the respondent to submit an answer of the type specified in rule 5.12(544A,272C) within 20 days after receipt of the notice of hearing.

193B—5.12(544A,272C) Form of answer. The answer shall contain the following information:
1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

193B—5.13(544A,272C) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

193B—5.14 (17A) Presiding officer.

5.14(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board or a panel of the board.

5.14(2) The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

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

c. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

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

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

f. Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.

g. The request was not timely filed.

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

5.14(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

5.14(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

5.14(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

193B—5.15(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193B—5.16(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

193B—5.17(17A) Disqualification.

5.17(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

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

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

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

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

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

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

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

5.17(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrule 5.32(9).

5.17(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

5.17(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 5.17(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 5.34(17A) and seek a stay under rule 5.37(17A).

193B—5.18(17A) Consolidation—severance.

5.18(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

5.18(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193B—5.19(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

193B—5.20(17A) Service and filing of pleadings and other papers.

5.20(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the board, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

5.20(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

5.20(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

5.20(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

5.20(5) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Architectural Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

193B—5.21(17A) Discovery.

5.21(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

5.21(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 5.21(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

5.21(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193B—5.22(17A) Subpoenas. In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). After service of the notice of hearing under rule 5.11(544A,272C), the following procedures are available to the parties in order to obtain relevant and material evidence:

1. Board subpoenas for books, papers, records, and other real evidence will be issued to a party upon request. Subpoenas for witnesses may also be obtained. The executive secretary shall issue all subpoenas for both parties upon request. The request, which may be verbal or written, must specify the documents sought to be obtained and the names of the witnesses whose testimony is sought.

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

3. In the event of a refusal to obey a subpoena, either party or the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

193B—5.23(17A) Motions.

5.23(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

5.23(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

5.23(3) The presiding officer may schedule oral argument on any motion.

5.23(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

5.23(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 5.36(17A) and appeal pursuant to rule 5.35(17A).

193B—5.24(17A) Prehearing conference.

5.24(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

5.24(2) Each party shall bring to the prehearing conference:

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

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

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

5.24(3) In addition to the requirements of subrule 5.24(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

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

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

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

5.24(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

193B—5.25(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

5.25(1) A written application for a continuance shall:

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

b. State the specific reasons for the request; and

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

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

5.25(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

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

h. The timeliness of the request; and

i. Other relevant factors.

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

193B—5.26(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board rules. Unless otherwise provided, a withdrawal shall be with prejudice.

193B—5.27(17A) Intervention.

5.27(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

5.27(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

5.27(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

5.27(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

193B—5.28(544A,272C) Hearings. A hearing may be conducted before a majority of the board members. An administrative law judge may act as presiding officer to conduct the hearing for the board or a panel of the board. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and shall rule on all motions and objections.

5.28(1) *Examination of witnesses by the board.* The presiding officer and other board members have the right to conduct direct examination of the witnesses at any stage of that witness's testimony.

5.28(2) *Public hearing.* The hearing shall be open to the public unless the registrant or registrant's attorney requests in writing that the hearing be closed to the public.

5.28(3) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electrical means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

5.28(4) *Order of proceedings.* Before testimony is presented, the record shall show the identity of any board members present, identity of the administrative law judge, identity of the primary parties and their representatives, and of the fact that all testimony is being recorded. Hearings before the board shall generally be conducted in the following order, subject to modification at the discretion of the board.

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state interest before the board shall make a brief opening statement which will include a summary of charges and the witnesses and documents to support such charges.

c. The respondent(s) shall each be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. A summary, at the close of the evidence on behalf of the state.

f. The presentation of evidence on behalf of the respondent(s).

g. Rebuttal evidence on behalf of the state, if any.

h. Rebuttal evidence on behalf of the respondent(s), if any.

i. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

5.28(5) *Immunity.* The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

5.28(6) *Evidence.* Admissibility of evidence at the hearing shall be governed by Iowa Code section 17A.14. Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies may also be furnished to members of the board.

5.28(7) *Final decision.* When four or more members of the board preside over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive secretary. A copy of the decision and order shall immediately be sent by certified mail, return receipt requested, to the registrant's last-known post office address or may be served as in the manner of original notices upon the registrant.

193B—5.29(544A,272C) Dispensation. The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

1. Dismiss the charges.
2. Revoke the architect's registration. In the event of a revocation, the registrant shall not be allowed to remain a partner or shareholder of a business entity if the law requires all partners or shareholders of such entity to be registered architects.
3. Suspend the registrant's registration as authorized by law.
4. Impose civil penalties, the amount which shall be set at the discretion of the board but which shall not exceed $1000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code sections 544A.13 and 544A.15 and these rules, or for any repeated offenses.
5. Impose a period of probation, either with or without conditions.
6. Require reexamination, using one or more parts of the examination given to architectural registrant candidates.
7. Require additional professional education, reeducation, or continuing education.
8. Issue a citation and a warning.
9. Issue a consent order.
10. Voluntary surrender of registration is considered as disciplinary action.

193B—5.30(17A) Evidence.

5.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

5.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

5.30(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

5.30(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies may also be furnished to members of the board.

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

5.30(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

5.30(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

193B—5.31(17A) Default.

5.31(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

5.31(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

5.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 5.35(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

5.31(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

5.31(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

5.31(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

5.31(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 5.34(17A).

5.31(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

5.31(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

5.31(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 5.37(17A).

193B—5.32(17A) Ex parte communication.

5.32(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 5.17(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

5.32(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

5.32(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

5.32(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 5.20(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

5.32(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

5.32(6) The executive secretary or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 5.32(1).

5.32(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 5.25(17A).

5.32(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

5.32(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

5.32(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the division administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193B—5.33(17A) Recording costs. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

193B—5.34(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193B—5.35(17A) Appeals and review.

5.35(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

5.35(2) *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

5.35(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order which is being appealed;

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

d. The relief sought;

e. The grounds for relief.

5.35(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

5.35(5) *Scheduling.* The board shall issue a schedule for consideration of the appeal.

5.35(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

193B—5.36(17A) Applications for rehearing.

5.36(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

5.36(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 5.35(4), the applicant requests an opportunity to submit additional evidence.

5.36(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

5.36(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the certificate of service on all parties.

5.36(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

193B—5.37(17A) Stays of board actions.

5.37(1) *When available.*

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

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

5.37(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

5.37(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

193B—5.38(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

193B—5.39(17A) Emergency adjudicative proceedings.

5.39(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the U.S. Constitution, the Iowa Constitution, and other provisions of law, the board may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

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

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

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

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

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

5.39(2) *Issuance of order.*

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

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

(1) Personal delivery;

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

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

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

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

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

5.39(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

5.39(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

193B—5.40(544A,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

193B—5.41(544A,272C) Reinstatement. Any person whose registration has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

5.41(1) If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the registration was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of voluntary surrender.

5.41(2) All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the respondent's registration. Such application shall be docketed in the original case in which the registration was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board.

5.41(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation or suspension of the respondent's registration no longer exists and that it will be in the public interest for the registration to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5.41(4) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not fewer than five members of the board. This order will be published as provided for in rule 5.42(544A,272C).

193B—5.42(544A,272C) Publication of decisions. Final decisions of the board relating to disciplinary actions, including consent agreements and consent orders, are public documents, are available to the public, shall be published in the professional licensing division's newsletter and may be transmitted to the appropriate professional association(s), other states, and news media.

193B—5.43(544A,272C) Hearing on license denial. If the board, upon receipt of a complete and proper application for initial registration or reciprocal registration, accompanied by the proper fee, shall deny registration to the applicant, the executive secretary shall send written notice to the applicant by regular first-class mail identifying the basis for denial.

5.43(1) An applicant denied registration who desires to contest the denial must request a hearing before the board within 30 days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service. The request for hearing shall specify the grounds under which the applicant contends that the board erred in denying registration. If a request for hearing is timely made, the board shall issue notice of hearing and conduct a contested case hearing.

5.43(2) Hearings on registration denial shall be open to the public. The burden of presenting evidence and information or documents to support the applicant's position shall be the responsibility of the applicant.

5.43(3) The board, after a hearing on registration denial, may grant or deny the application for registration. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for registration could be granted, if applicable.

5.43(4) The notice of registration denial, request for hearing, notice of hearing, and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, NCARB, and other persons or entities.

5.43(5) Judicial review of a final order denying registration may be sought in accordance with the provisions of Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, which are applicable to judicial review of any agency's final decision in a contested case.

193B—5.44(544A,272C) Recovery of hearing fees and expenses. The board may assess the architect certain fees and expenses relating to a disciplinary hearing, only if the board finds that the architect did violate Iowa Code chapter 544A and rules of the architectural examining board.

5.44(1) The board may assess an amount up to the following costs under this rule:

a. For conducting a disciplinary hearing, an amount not to exceed $75.

b. All applicable costs involved in the transcript including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs.

c. All normally accepted witness expenses and fees for a hearing or the taking of depositions. This shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony.

d. All normally applicable costs involved in depositions including, but not limited to, the services of the court reporter recording the deposition, transcription, duplication, and postage or delivery costs.

e. The board, at its discretion, may assess an appropriate amount up to but not exceeding the $75 fee established by this subrule and the actual acceptable costs, fees, and expenses involved.

5.44(2) Fees, costs, and expenses assessed pursuant to this rule shall be calculated and may be entered into the disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the architect.

a. When it is impractical or not possible to include the assessment and time period in the disciplinary order in a timely manner, or if the expenditures occur after the disciplinary order, the board, by a majority vote of the members present, may assess the amount to be reimbursed and the time period in which payment is to be made by the architect.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have to the end of the sixth month after the date the state of Iowa paid the expenditures to assess the architect for such expenditure.

5.44(3) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

5.44(4) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall be considered prima facie evidence of a violation of Iowa Code chapter 544A. However, no action may be taken against the architect without a hearing as provided in this chapter.

193B—5.45(544A) Civil penalties against nonregistrant. The board may impose civil penalties by order against a person who is not registered as an architect pursuant to Iowa Code chapter 544A based on the unlawful practices specified in Iowa Code section 544A.15(3). In addition to the procedures set forth in Iowa Code section 544A.15(3), this rule shall apply.

5.45(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 544A.15(3) shall be served upon the nonregistrant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the nonregistrant may accept service personally or through authorized counsel. The notice shall include the following:

a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.

b. Reference to the particular sections of the statutes and rules involved.

c. A short, plain statement of the alleged unlawful practices.

d. The dollar amount of the proposed civil penalty.

e. Notice of the nonregistrant's right to a hearing and the time frame in which hearing must be requested.

f. The address to which written request for hearing must be made.

5.45(2) Nonregistrants must request hearing within 30 days of the date the notice is mailed, if served through restricted certified mail to the last-known address, or within 30 days of the date of service, if service is accepted or made in accordance with Rule of Civil Procedure 56.1. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service.

5.45(3) If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

5.45(4) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against registered architects.

5.45(5) In addition to the factors set forth in Iowa Code section 544A.15(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

a. The time elapsed since the unlawful practice occurred.

b. Evidence of reform or remedial actions.

c. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.

d. Whether the violation involved an element of deception.

e. Whether the unlawful practice violated a prior order of the board, a court order, cease and desist agreement, consent order, or similar document.

f. The clarity of the issue involved.

g. Whether the violation was willful and intentional.

h. Whether the nonregistrant acted in bad faith.

i. The extent to which the nonregistrant cooperated with the board.

5.45(6) A nonregistrant may waive right to hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

5.45(7) The notice of intent to impose civil penalty and order imposing civil penalty are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the National Council of Architectural Registration Boards, and other entities. Hearings shall be open to the public.

193B—5.46(252J) Certificates of noncompliance. The board shall suspend or revoke a certificate of registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

5.46(1) The notice required by Iowa Code section 252J.8 shall be served upon the registrant by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 56.1. Alternatively, the registrant may accept service personally or through authorized counsel.

5.46(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the registrant.

5.46(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 252J.8 and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive secretary shall notify the registrant of the board's intent to revoke the certificate of registration.

5.46(4) Registrants shall keep the board informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

5.46(5) All board fees for license renewal or reinstatement must be paid by registrants before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 252J.

5.46(6) In the event a registrant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of suspension or revocation of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

5.46(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant or applicant when the certificate of registration is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

193B—5.47(261) Suspension or revocation of a certificate of registration—student loan. The board shall suspend or revoke a certificate of registration upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

5.47(1) The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the registrant may accept service personally or through authorized counsel.

5.47(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the registrant.

5.47(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the licensee that the certificate of registration will be suspended, unless the certificate of registration is already suspended on other grounds. In the event a certificate of registration is on suspension, the executive secretary shall notify the registrant of the board's intention to revoke the certificate of licensure.

5.47(4) Registrants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

5.47(5) All board fees required for registration renewal or registration reinstatement must be paid by registrants and all continuing education requirements must be met before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

5.47(6) In the event a registrant timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

5.47(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant when the certificate of registration is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 17A, 252J, 272C, and 544A and Iowa Code sections 261.126 to 261.127.

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CHAPTER 8
PETITION FOR RULE MAKING AND FOR DECLARATORY ORDER

193B—8.1(17A) Petition for rule making. Any person or board may file a petition for rule making with the board.

A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

ARCHITECTURAL EXAMINING BOARD

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 8.4(17A).

8.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

8.1(2) The board may deny a petition because it does not substantially conform to the required form.

193B—8.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

193B—8.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the executive secretary.

193B—8.4(17A) Board consideration.

8.4(1) Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

8.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

8.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

193B—8.5(17A) Petition for declaratory order. Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board's offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ARCHITECTURAL EXAMINING BOARD

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions the petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.
8. Any request by petitioner for a meeting provided for by 8.11(17A). The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

193B—8.6(17A) Notice of petition. Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 8.10(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

193B—8.7(17A) Intervention.

8.7(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

8.7(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

8.7(3) A petition for intervention shall be filed at the board's offices. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ARCHITECTURAL EXAMINING BOARD

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

The petition for intervention must provide the following information:

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

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

193B—8.8(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

193B—8.9(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive secretary of the board at the board's offices.

193B—8.10(17A) Service and filing of petitions and other papers.

8.10(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

8.10(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board's offices. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

8.10(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 193B—subrule 5.20(5).

193B—8.11(17A) Board consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

193B—8.12(17A) Action on petition.

8.12(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Acts, chapter 1202, section 13(5).

8.12(2) The date of issuance of an order or of a refusal to issue an order is as defined in 193B—1.5(544A,17A).

193B—8.13(17A) Refusal to issue order. The board shall not issue a declaratory order where prohibited by Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

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

8.13(1) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

8.13(2) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue a ruling.

193B—8.14(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner, intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

193B—8.15(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

193B—8.16(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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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
[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 mandated 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. Appointments to fill vacancies serve for the balance of the term.

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 business office address is Holmes Murphy Building, 420 Keo Way, Des Moines, Iowa 50309, telephone (515)242-5757. Business hours are 8 a.m. to 4:30 p.m. Monday through Friday.

205—1.4(904A) Board meetings. The board may conduct the following meetings:

1.4(1) *Business meeting.* The board may meet each month to consider rules, procedure and other matters.

1.4(2) *Public hearing.* The board may conduct a public hearing to solicit input and comment on parole and work release procedures.

1.4(3) *Board session.* The board shall be in session each month at any location designated by the chairperson. A board session may include:

a. Parole and work release case reviews;
b. Parole and work release interviews;
c. Parole rescission hearing;
d. Parole discharge reviews;
e. Executive clemency reviews.

1.4(4) *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(5) *Majority vote.* All questions shall be decided by a majority vote of the members except as provided herein.

1.4(6) *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(7) *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(8) *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(9) *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 request 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(10) *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.

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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 printed in the first volume of the Iowa Administrative Code, with the following amendments:

2.3(2) *Anticipated rule making.* In lieu of the words "(commission, board, council, director)", the words "board of parole" should be inserted.

2.5(1) *Written comments.* In lieu of the words "(identify office and address)", the words "Executive Director of the Board of Parole, 420 Keo Way, Holmes Murphy Building, Des Moines, Iowa 50309" should be inserted.

2.6(2) *Mailing list.* In lieu of the words "(designate office)", the words "Board of Parole, 420 Keo Way, Holmes Murphy Building, Des Moines, Iowa 50309" should be inserted.

2.11(1) *General.* In lieu of the words "(specify the office and address)", the words "executive director of the board of parole" should be inserted.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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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 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 "420 Keo Way, Holmes Murphy Building, Des Moines, Iowa 50309".

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. Inquiries concerning the status of a petition for rule making may be made to the Executive Director of the Board of Parole, 420 Keo Way, Holmes Murphy Building, Des Moines, Iowa 50309.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 4
DECLARATORY ORDERS

The board of parole hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure 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 "420 Keo Way, Holmes Murphy Building, Des Moines, Iowa 50309". 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. Within 15 days after receipt of a petition for a declaratory order, the board of parole shall give notice of the petition to all persons not served by the petitioner pursuant to 205—4.6(17A) to whom notice is required by any provision of law. The board of parole may also give notice to any other persons.

205—4.3(17A) Intervention.

4.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 25 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

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 "Holmes Murphy Building, 420 Keo Way, Des Moines, Iowa 50309-1638". 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. Inquiries concerning the status of a petition for a declaratory order may be made to the Executive Director of the Board of Parole, 420 Keo Way, Holmes Murphy Building, Des Moines, Iowa 50309.

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, Holmes Murphy Building, 420 Keo Way, Des Moines, Iowa 50309-1638". 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 the "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 as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 5
PUBLIC RECORDS AND 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 public records and fair information practices 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" are 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" are those records which are not authorized or required to be kept confidential under Iowa Code sections 22.7, 22.8, 904.601, 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 Board of Parole Office, Holmes Murphy Building, 420 Keo Way, Des Moines, Iowa 50309-1638, (515)242-5757.

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 practicable. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code sections 22.8(4), 22.10(4) or 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 to provide any proof necessary to establish relevant facts, request 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 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 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 the board of parole. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

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 205—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 operational decision. 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 local units of 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 where 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 fiscal bureau under Iowa Code section 2.52.

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) Where 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 of 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 section 422.17, 422.20)

c. Minutes of closed meetings of a government 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, 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 Rules of Civil Procedure 122(c), 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, and 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 describes the legal authority for the collection of that information, the means of storage of that information and 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, information required for 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.* 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, etc., 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 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 exempted from disclosure by law.

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 individuals 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 Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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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(910A), 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 their 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's 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 that 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, 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 (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 of 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 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 where no conviction occurred.

h. Family and personal history.

i. Financial information.

j. Information from disciplinary reports and investigations other than 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. Pre-sentence investigations as provided under Iowa Code chapter 901.

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

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

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 court 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 regarding the inmate's risk assessment score from the board of parole. 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 risk assessment score per commitment to prison from each inmate.

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

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CHAPTER 7
VICTIM NOTIFICATION

205—7.1(910A) Definitions.

"Notification" means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit an agency 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 said 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(910A) Victim registration. A victim may register by filing a written request-for-registration form with the county attorney. The county attorney shall notify victims in writing and advise them of their 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 Code of Iowa. 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(910A) 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(910A) 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(910A) 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(910A) 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(910A) 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, shall be disclosed to the inmate, unless the victim requests that the information be withheld and the board determines that releasing the information would endanger the safety of the person providing the statement of testimony.

These rules are intended to implement Iowa Code chapter 910A.

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CHAPTER 8
PAROLE AND WORK RELEASE CONSIDERATION
[Prior to 2/22/89, Parole, Board of[615] Chs 3, 4, 5]

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 204.406 or 204.413;

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 906.5.

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(904A) Inmate orientation. 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 906.5.

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 only notify an inmate granted parole or work release, except as provided in 8.6(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) Corrections 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 corrections 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 decision.

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

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 its 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.

8.11(1) The board shall normally consider only information that has been reviewed by the inmate, except where the board deems such review not feasible. The information shall be considered only if the following safeguards are followed:

a. 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:

(1) Any statements attributed to the inmate;
(2) Any allegations of criminal or antisocial behavior with or without court conviction from within or without the institution;
(3) Any allegations of threats made by the inmate;
(4) Any allegations of drug addiction or alcoholism;
(5) Any allegations regarding family history, employment or education;
(6) Disciplinary record at the institution.

b. 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:

(1) The general substance of the information;
(2) The number of communications;
(3) The type of communications.

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

c. 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 diagnosis shall be deemed confidential.

8.11(2) A parole liaison officer may review any file and investigate any facts, allegations, opinions, or comments contained therein. If communications adverse to the inmate or parolee are considered by the board, the inmate or parolee shall be informed of the fact.

205—8.12(906) Interview procedure. The 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 panel shall give the inmate ample opportunity to express views and present materials.

205—8.13(906) Case review procedure. The 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 should 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. 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 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 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 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 accord with the rules of the institution or the department of corrections.

g. Spectators who leave during a time designated for entering or leaving or during a short break by the panel may retain their 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, 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 panels, 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 is prohibited of any proceeding which is held in closed session under Iowa law.

(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 of any or all media participants at any time during the proceedings in the event the panel or board finds that rules established under 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. Advanced 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 accord 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 camera 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 during a parole proceeding at any one time.

(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 of 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 for 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 of 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 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 with a risk assessment score of one, two, three, four, five, or six only 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) The board shall defer granting parole or work release to an inmate with a risk assessment score of seven or eight and refer the case to the full board for review. The full board shall grant parole or work release only if at least four members agree that the inmate can be released without detriment to the community or to the inmate. If four members do not agree, the board shall deny parole or work release. If there are not four board members available due to unfilled vacancies on the board, conflicts of interest of board members, illness, or other reason, the board chair may, upon consultation with the board, suspend the four-vote requirement and allow parole or work release to be granted upon three votes.

8.15(4) The board shall defer granting parole or work release to an inmate with a risk assessment score of nine and refer the case to the full board for review. The full board shall grant parole or work release only if the board members unanimously agree that the inmate can be released without detriment to the community or to the inmate. If the board members do not unanimously agree, the board shall deny parole or work release. If any of the five board members are not available due to unfilled vacancies on the board, conflicts of interest of board members, illness, or other reason, the board chair may, upon consultation with the board, suspend the five-vote requirement and allow parole or work release to be granted upon four votes if one board member is unavailable, or upon three votes if two board members are unavailable.

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.

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

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.

These rules are intended to implement Iowa Code chapter 906 and Iowa Code section 904A.4(8).

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CHAPTER 9
PAROLE AND WORK RELEASE RESCISSION
Reserved

◊Two ARCs

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 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. The inmate shall remain at the residential facility until the parole agreement is signed.

These rules are intended to implement Iowa Code chapter 906.

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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 and approved by the parole officer. 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 parole officer shall determine if the parolee shall be incarcerated prior to the parolee's return to the Iowa Medical and Classification Center and shall make arrangements accordingly. The parolee shall receive credit for the time spent on parole prior to the voluntary termination of parole.

205—11.2(906) Prerevocation procedures. Reserved.

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 the following kinds 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 has been unavailable for contact for 30 days, or reliable information has been received indicating that the parolee is taking flight or absconding.

f. Any behavior indicating 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 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 dispose of 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 media provided by the board specifying the parole violation charges against a parolee and containing or referring to information known to the parole agent 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 or 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; and provide additional requested information to the board at any time or change the 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 agent may make 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. The senior 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 before another administrative parole judge.

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

Generally, violations occurring over 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 violation of parole, but treatment at 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 and sentenced to a new felony.

11.6(3) *District review.*

a. Parole officer's responsibility. After discovery of information indicating a possible violation 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 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 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. The right to:

(1) Appear and speak in their own behalf and to be aided by an interpreter if aid is determined to be necessary by the administrative parole judge.

(2) Representation by an attorney or, if the parolee is indigent, the right to representation by an attorney pursuant to rule 26 of the Iowa Rules of Criminal Procedure.

(3) Remain silent.

(4) Present witnesses to testify in the parolee's behalf as to matters relevant to the alleged violation of parole.

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

(6) 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 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, their information documented in writing or on tape, the reasons for their fear should also be documented, and the administrative parole judge shall determine whether good cause exists to excuse the 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 to or disclose the witness's whereabouts to a parolee or the parolee's attorney. No attempt should 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, and 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 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 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 prior to the hearing to the board business office. 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 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 parole revocation hearing.

a. The parole officer will 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 parolee's attorney of record of 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 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 the parole;
(2) Revocation of the parole with the parolee placed on work release;
(3) Reinstatement of the parole with the previous parole conditions;
(4) Reinstatement of the 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 parole revocation hearing to the parolee, 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 rules 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 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 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 parole and probation 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 simple misdemeanors, 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 should also inform the parolee of the opportunity to waive the parolee's right to personal appearance and consent to the parole revocation hearing 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 the parole officer/supervisor if 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 department of corrections without further proceedings.

(1) A waiver is complete and final upon execution.

(2) A 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 should be scheduled and conducted as a routine parole revocation hearing with the exception that it shall be conducted electronically.

205—11.12(908) Conviction of a felony while on parole. When a parolee is convicted and sentenced to incarceration in Iowa for a felony 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, 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 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 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 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 provision 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.

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

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CHAPTER 12
PROBATION REVOCATION IN THE SIXTH JUDICIAL DISTRICT ONLY

205—12.1(906) Voluntary termination of probation. Any voluntary termination of probation should be executed in writing by the probationer and approved by the probation officer. Upon the execution of the voluntary termination of probation, the probationer's probation is terminated and the probationer shall be committed to the Iowa Medical and Classification Center at Oakdale as soon as reasonably possible. The probation officer shall determine if the probationer shall be incarcerated prior to the probationer's commitment to the Iowa Medical and Classification Center and shall make arrangements accordingly.

205—12.2(906) Prerevocation procedures. Reserved.

205—12.3(908) Revocation initiated. Probation revocation procedures shall be initiated only as provided by Iowa Code chapter 908, which this rule is intended to implement.

205—12.4(908) Revocation of probation. The board of parole's parole and probation judges for good cause shown may revoke any probation previously granted. Good cause for revocation of probation shall include the violation of a condition or conditions of the probation agreement, or probation plan.

205—12.5(908) Probation violations.

12.5(1) The probation officer shall report to the board any probationer who is reasonably believed to have engaged in the following kinds 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 probationer.

e. A probationer whose whereabouts are unknown and who has been unavailable for contact for 30 days, or reliable information has been received indicating that the probationer is taking flight or absconding.

f. Any behavior indicating the probationer may be suffering from a mental disorder which impairs the probationer's ability to maintain the probation in the community or which makes the probationer a danger to the probationer or others when the mental disorder cannot be adequately treated while in the community.

g. Any other conduct or pattern of conduct in violation of the conditions of probation deemed sufficiently serious by the probation officer.

12.5(2) The probation officer or supervisor is authorized to dispose of any other probationer misconduct not required to be reported above.

205—12.6(908) Probation violation report. The probation violation report is a document prepared by the probation officer on a form or media provided by the board specifying the probation violation charges against a probationer and containing or referring to information known to the probation officer relevant to the charges.

12.6(1) *Supplemental probation violation report.* A supplemental probation 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 or 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; and provide additional requested information to the board at any time or change the officer's recommendation. A supplemental report shall be filed upon the apprehension of a probationer on absconder status.

12.6(2) *Recommendations.* The probation officer shall recommend the appropriate disposition necessary to deal with the alleged violation. In a probation violation report, the probation agent may make the following recommendations:

a. *Continue on probation.* This recommendation may be used when a violation charge is not serious enough to warrant incarceration. A copy of the violation report containing a "continue on probation" recommendation shall be personally delivered and explained to the probationer, by the probation officer, and the probationer 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 probationer may request a probation hearing. The senior administrative parole and probation judge shall review the violation report and enter an order either affirming the recommendation to continue on probation or schedule the matter for the probation revocation hearing before another administrative parole and probation judge.

A probationer shall be allowed only two violation reports containing a "continue on probation" recommendation in a 12-month period; then a probation revocation hearing must be scheduled.

Generally, violations occurring over 12 months prior to the request for a probation 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 incarceration 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 probationer are unknown. The probation 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 probationer who is serving time in another jurisdiction for an offense committed while on probation which would constitute a felony or aggravated misdemeanor if committed in Iowa.

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

12.6(3) *District review.*

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

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

12.6(4) *Procedure in lieu of arrest.* A probation officer may issue a summons/citation for a probation violation hearing. If a summons/citation is issued, the probation officer shall indicate the date, time, and place of the probation hearing on the summons/citation. The probation officer shall contact the board of parole as soon as possible upon the issuance of a summons/citation. The probation revocation hearing conducted pursuant to a summons/citation shall be conducted according to Chapter 12 of the board of parole's administrative rules.

205—12.7(908) Probation revocation hearing. Following receipt of a probation officer's request for a probation revocation hearing, the administrative parole and probation judge or the board's designated officer shall set the date, time and place of the probation revocation hearing and shall cause a notice of probation revocation hearing to be completed. The probation revocation hearing shall be held in the county of probationer's residence; in the county where alleged probation violations occurred; in the same judicial district as that in which the alleged probation violator had the initial appearance, or in the county from which the warrant for the arrest of the alleged probation violator was issued.

12.7(1) *Probation revocation hearing notice.* The probation officer or board's designated officer shall cause to be prepared a written notice to the probationer of the date, time, and place of the probation 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 subrule 6.4(2).

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

c. Inform the probationer of the purpose of the hearing; the violations of probation condition(s) 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 probationer shall be entitled at the probation revocation hearing. The right to:

(1) Appear and speak in their own behalf and to be aided by an interpreter if aid is determined to be necessary by the administrative parole and probation judge.

(2) Representation by an attorney or, if the probationer is indigent, the right to representation by an attorney pursuant to rule 26 of the Iowa Rules of Criminal Procedure.

(3) Remain silent.

(4) Present witnesses to testify in the probationer's behalf as to matters relevant to the alleged violation of probation.

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

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

12.7(2) *Testimony at probation revocation hearing.* All testimony shall be under oath.

12.7(3) *Probation revocation hearing recorded.* Probation 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 probation revocation hearing. The probation revocation hearing may be videotaped if deemed appropriate by parole and probation judges.

12.7(4) *Witnesses segregated.* The administrative parole and probation judge on the judge's own motion or on the request of the probationer, probationer's counsel, or any representative of the state may order witnesses be segregated except that the probation officer, probationer, and counsel may be present at all times at the hearing.

12.7(5) *Probation revocation hearing evidence.* The admissibility of evidence at probation revocation proceedings is governed by Iowa Code section 17A.14.

a. *Documentary evidence.* The probation officer shall ensure all relevant documentary evidence is available at the hearing and has been made available to the probationer and the probationer'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 probation officer shall specify what evidence is unavailable and why.

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

12.7(6) *Witnesses.*

a. *Probationer request.* A probationer may request either friendly or adverse witnesses. If a witness is requested by the probationer or the probationer's attorney, the probationer or the probationer's attorney shall notify the probation officer.

b. *Probation officer request.* If, in preparing the case prior to the hearing, the probation officer requires a particular witness to demonstrate essential facts of violation, attendance of that witness may be requested by the officer even though the probationer has not requested that witness. If a witness is requested by the probation officer, the officer shall notify the probationer or the probationer'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 probation officer prior to the hearing, their information documented in writing or on tape, the reasons for their fear should also be documented, and the administrative parole and probation judge shall determine whether good cause exists to excuse the witness's attendance and shall document the decision including the reasons.

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

12.7(7) *Subpoenas—general.* Subpoenas may be issued to require the attendance of witnesses or the production of documents at probation revocation hearings.

a. Who may request. The probationer, the probationer's attorney, probation officer, and board staff may request that a subpoena be issued.

b. To whom made. Requests shall be made directly to the administrative parole and probation 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 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.

12.7(8) *Continuances.*

a. A hearing may be continued by the presiding administrative parole and probation 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 prior to the hearing, to the board business office. Each party shall be granted only one continuance except that in the case of extreme emergency, determined by the presiding administrative parole and probation 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 request continuance within the allotted time, the presiding administrative parole and probation 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 probationer's attorney of record for the probation revocation proceeding in lieu of personal service upon the probationer.

d. If a notice of continuance does not involve any new allegations of probation violation, it need not be served upon the probationer or the probationer'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 probationer or the probationer's attorney of record at least seven days prior to the hearing date.

12.7(9) *Areas of responsibility.* The following areas of responsibility will apply for probation revocation hearings.

a. The probation officer will be responsible for the following:

(1) Coordinating and scheduling location, security, and control of the probation 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) Serving a written notice of probation revocation hearing on the county attorney or the county attorney's designee at least five days prior to the hearing date;

(4) Notifying probationer's attorney of record of hearing date, time, and place;

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

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

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

(8) Attending the hearing;

(9) Arranging security for posthearing transfer of the probationer in the event incarceration is ordered;

(10) Forwarding a summary of probation hearing to the county attorney, or the county attorney's designee as soon as reasonably possible following the probation revocation hearing.

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

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

(2) Advising the business office regarding progress of each case;

(3) Forwarding to the business office all materials and forms when hearings are completed.

12.7(10) *Probation revocation hearing—adjudication.*

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

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

c. If the administrative parole and probation judge finds that the probationer has violated a condition or conditions of probation, the judge shall make one of the following dispositions at the probation revocation hearing or any disposition allowed by Iowa Code section 908.11:

(1) Revocation of the probation.

(2) Revocation of the probation with the probationer placed on work release.

(3) Reinstatement of the probation with the previous probation conditions.

(4) Reinstatement of the probation with a modification of the probation conditions.

(5) Continuation of the dispositional portion of the hearing.

d. The administrative parole and probation judge shall determine from the record established at the final revocation hearing the date(s) of violation of probation. The judge shall also determine the number of days of probation which shall not be counted toward the discharge of the probationer's sentence.

12.7(11) *Probation revocation—hearing summary.* The administrative parole and probation judge or the board's designated officer, shall forward a summary of probation revocation hearing to the probationer, probationer's attorney, the probation officer, and the board office as soon as reasonably possible following the probation revocation hearing. The summary of the probation 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.

12.7(12) *Probation revocation hearing—conduct of the media.* The rules governing the conduct of the media at parole interviews as set out in 205—subrule 8.14(4) shall also apply to probation 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 and probation judge.

205—12.8(908) Appeal or review. The order of the administrative parole and probation judge shall become the final decision of the board of parole unless, within ten days of the date of the decision, the probation 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 probation revocation hearing conducted by the administrative parole and probation judge. Appeals must be received at the parole office or be postmarked by the applicable date or they will not be considered.

205—12.9(908) Interstate compact probable cause hearings. The Iowa board of parole may conduct interstate compact probation probable cause hearings under the same procedures as the Iowa probation revocation hearings.

12.9(1) *Interstate compact probable cause hearings.* The Iowa board of parole, or an administrative parole and probation judge, may conduct a probable cause hearing for a probationer from another state who is on probation in Iowa, under the terms of the interstate compact, according to the same procedures which govern probation revocation hearings for Iowa probationers who are on probation in Iowa.

12.9(2) *Interstate compact probation revocation hearings.* If an Iowa probationer was on probation outside the state of Iowa through the interstate compact, and has been returned to Iowa following a finding of probable cause in the receiving state, a probation revocation hearing shall be conducted for the probationer at the Iowa institution at which the probationer is incarcerated. This hearing shall be conducted according to the same procedures as those specified for hearings conducted for Iowa probationers who are on probation in the state of Iowa.

205—12.10 Reserved.

205—12.11(908) Waivers. When the probation officer makes a recommendation to the board of parole for revocation of probation, the probation officer shall inform the probationer of the probationer's rights and afford the probationer the opportunity to execute a waiver of probation revocation hearing. The probation officer should also inform the probationer of the opportunity to waive the probationer's right to personal appearance and consent to the probation revocation hearing being conducted over the telephone.

12.11(1) *Waiver of probation revocation hearing.* A waiver of probation 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 and probation judge to contest the violations.

12.11(2) *Probation revocation hearing waiver procedures.* If the probationer desires to execute a waiver of probation revocation hearing, the waiver shall be entered on the appropriate form provided by the board which shall be signed by the probationer in the presence of the administrative parole and probation judge or the probation officer/supervisor if conducted electronically. The administrative parole and probation judge shall make a verbatim record of the waiver proceeding and shall address the probationer personally and inform the probationer of and determine that the probationer understands the contents of the waiver form which shall include:

a. The nature of the probation violation to which the waiver is addressed;

b. The legal rights of the probationer;

c. The fact that the execution of the waiver constitutes an admission of the alleged violation(s);

d. The fact that the probationer may be committed to the custody of the Iowa department of corrections without further proceedings.

(1) A waiver is complete and final upon execution.

(2) A waiver may be appealed according to the parole board's probation revocation appeal process in rule 205— 12.8(908).

12.11(3) *Waiver of the right to personal appearance.* In the event the probationer executes a waiver of the right to personal appearance and consent to probation revocation hearing to be conducted over the telephone, the probation revocation hearing should be scheduled and conducted as a routine probation revocation hearing with the exception that it shall be conducted electronically.

205—12.12(908) Conviction of a felony while on probation. Reserved.

205—12.13(908) Conviction of an aggravated misdemeanor while on probation. Reserved.

205—12.14(908) Electronic means. The administrative parole and probation judges may use facsimile machines, telephones, two-way interactive video or other electronic means to conduct any or all of the probation revocation proceedings and probation revocation hearings. An electronically produced document shall have the same force and effect as an original document.

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

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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 parolee expires the term of the parolee's sentence.

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 parolee expires the term of the parolee's sentence.

These rules are intended to implement Iowa Code section 906.15.

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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 review the record of a Class "A" felon serving a life term at its discretion.

205—14.3(248A) 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 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 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 a restoration of citizenship at any time following the discharge of the person's sentence.

b. A person applying for restoration of citizenship within 60 days of discharge of the person's sentence shall submit the short form Application for Restoration of Citizenship, together with an original of a progress report from the supervising agent, to the board. This form may be obtained from the supervising officer. The board shall submit a recommendation to the governor regarding restoration of citizenship.

c. A person applying for restoration of citizenship more than 60 days after discharge of the person's sentence 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(248A,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(248A,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.

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

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

205—15.1(17A) General. An inmate, parolee, Sixth District probationer 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 appealed from.

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 the designee, or the panel may affirm, modify or reverse the action being appealed, or may defer 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 as amended by 1998 Iowa Acts, chapter 1202.

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GENERAL SERVICES DEPARTMENT[401]

Rules transferred from agency number [450] to [401] to conform with the reorganization numbering scheme in general, IAC Supp 11/15/89.

CHAPTER 6
APPEALS

CHAPTER 7
PURCHASING PROCEDURES FOR STATE AGENCIES

CHAPTER 8
SPECIAL RULES FOR THE ACQUISITION OF DATA PROCESSING EQUIPMENT, SERVICES, OR SOFTWARE

CHAPTER 1
ORGANIZATION AND OPERATION

[Chapter 1 renumbered Chapter 6, IAC 1/18/84]
[Prior to 11/15/89, General Services[450] Ch 1]

401—1.1(18) Function. The Iowa department of general services was established by Iowa Code chapter 18. The department is responsible for providing prompt, high quality goods and professional services to other state departments and governmental subdivisions.

401—1.2(18) Organization and operations.

1.2(1) *Location.* The department is located in the Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)242-5120. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

1.2(2) *Administration of the department.* The chief executive officer of the department is the director of general services who is appointed by the governor with the approval of two-thirds of the members of the senate. The director serves at the pleasure of the governor.

1.2(3) *Divisions of department.* In order to carry out the functions of the department, the following divisions have been established:

a. The applications systems and programming division is responsible for providing data processing services to other state agencies, which include but are not limited to application development and maintenance, LAN support, product evaluation for mainframe or PC, and consultation services. In addition, the team supports a statewide voter registration and election services system.

b. The buildings and grounds division is responsible for the maintenance and appearance of the capitol complex buildings and grounds.

c. The communications division is responsible for developing, administering, coordinating and integrating communication services for state agencies.

d. The custodial services division is responsible for maintaining sanitary working environment for occupants and the public that utilize the 1.7 million square feet of office and exhibit spaces in the capitol complex.

e. The customer service, administration and purchasing division is responsible for customer service activities including parking, building access, receiving of customer concerns, and being a focal point for department information; administration activities including accounting and budgeting, personnel, labor relations and risk management; and purchasing and materials management activities including purchasing and contracting for goods and services for all state agencies not exempted by law, the distributions of state and federal surplus and central supply.

f. The data operations division is responsible for the reliable storage, support and processing of large enterprise computer systems. This includes software support, data entry, data control and 24-hour computer operation.

g. The design and construction division is responsible for capitol complex space management, energy projects, building and monuments restoration, capital projects, statewide leasing; architectural, engineering, and construction management services for other state agencies in the complex and the state institutions and correctional facilities.

h. The fleet and mail division is responsible for the management of vehicular travel requirements for state agencies not exempted by law, processing and delivering of mail for state agencies in the capitol complex and in the city of Des Moines.

i. The printing and records division is responsible for all copy machines, printing purchases, centralized printing, state document sales, reviewing records-related systems for state agencies, developing retention schedules for state records, maintaining a central records storage facility and providing micrographics services to state agencies.

j. The technology, education and consulting (TEC) division is responsible for providing personal computer and mainframe training, database support and local area networking and technical service consulting to other state agencies.

This rule is intended to implement Iowa Code section 18.3.

401—1.3(18) Open records. Rescinded IAB 11/15/89, effective 12/20/89.

401—1.4(18) Petitions. Rescinded IAB 4/7/99, effective 7/7/99.

401—1.5(142B) Smoking.

1.5(1) Smoking is prohibited in all capitol complex buildings, except where specifically permitted by the director or by the officer to whom the director has assigned the area. The secretary of the senate, the clerk of the house and the court administrator are responsible for areas in the capitol building under their control.

1.5(2) Entrance doors of all capitol complex buildings shall be posted with signs reading, "smoking prohibited by law."

1.5(3) Smoking is allowed in private, enclosed offices occupied exclusively by smokers where the department, agency or agency officer has posted signs reading, "smoking permitted."

1.5(4) Smoking is not permitted in open space offices, lobbies, conference rooms, elevators, restrooms, hallways, stairwells, corridors, tunnels, and the Wallace building auditorium.

1.5(5) Cafeterias under control of the commission for the blind in the capitol complex shall be divided into smoking and nonsmoking sections and appropriate signs shall be posted.

This rule is intended to implement Iowa Code chapter 142B.

401—1.6(18) Use of buildings and grounds in the capitol complex.

1.6(1) Conference rooms and auditoriums within the capitol complex are for use by state agencies, boards and commissions for authorized purposes only. The secretary of the senate, the clerk of the house and the court administrator are responsible for areas in the capitol building under their control. The state historical building, 600 East Locust, will be available for use by the public by contacting the department of cultural affairs.

1.6(2) Arrangements for use of conference rooms and auditoriums by state agencies, boards and commissions may be made by contacting the agency responsible for scheduling the facility. Questions about usage shall be resolved by the director or director's designee.

1.6(3) Scheduling of events by the public as well as by state agencies, boards and commissions to be held in the historical building will be coordinated by the department of cultural affairs. Groups or individuals wishing to use the historical building for an event should contact the Facilities Coordinator, State Historical Society of Iowa, State Historical Building, Des Moines, Iowa 50319.

1.6(4) State agencies or the general public may request use of capitol complex grounds or parking lots for public events by letter to the director stating the name of the group, the purpose, the date, the number of participants and the name, address and telephone number of the responsible person and contact person. This shall not be interpreted as an infringement on the right of assembly and petition guaranteed by Section 20, Article I, The Constitution of Iowa.

1.6(5) Any state agency or public group granted permission to use the capitol complex facilities shall be responsible for a thorough cleanup after the event is concluded. All debris and animal waste shall be removed.

*1.6(6) Consumption of alcoholic beverages is not permitted on the capitol complex except for special events in the new State Historical Building located between East 6th Street and Pennsylvania Avenue and Locust Street and Grand Avenue with the prior written approval of the director of the department of general services and the director of the department of cultural affairs.

1.6(7) The director may refuse to allow use of the facilities which, in the director's judgment, would be disruptive of official state business or of the public health and welfare. The director may consider recommendations of capitol security, previous experience with the requesting group or events such as that requested.

1.6(8) The director may require, when reasonable, that a damage deposit or bond be posted by any group requesting use of the capitol grounds.

1.6(9) Rescinded IAB 11/15/89, effective 12/20/89.

1.6(10) Permission to distribute literature on the capitol complex grounds or in state-owned or occupied buildings in metropolitan Des Moines must be obtained from the director or the director's designee. The director may designate specific locations from which literature may be distributed in order to ensure control of litter, unobstructed access to public buildings and reasonable conduct of public business.

1.6(11) No state-owned equipment or state personnel shall be used for private parties, weddings, demonstrations, rallies, etc., without the written consent of the director or the director's designee.

1.6(12) The director may cause the temporary or permanent placement of barricades, ropes, signs, or other barriers to access to certain parts of state buildings or grounds. Unauthorized persons beyond the barriers may be removed or prosecuted as provided by law.

1.6(13) Public use of state buildings is restricted to normal office hours.

For all buildings except the Capitol Building and the Historical Building, normal office hours are 6 a.m. to 5:30 p.m. Monday through Friday. Buildings are closed to the public on weekends and holidays.

For the Capitol Building, normal office hours are 6 a.m. to 5:30 p.m. Monday through Friday, except that if a legislative session lasts past 5 p.m., the closing hour is extended until one-half hour beyond the session's end. On weekends and holidays, the building is open from 8 a.m. to 4 p.m.

For the Historical Building, normal office hours are 8 a.m. to 4 p.m. every day, including weekends and holidays.

Hours listed above are subject to change. Changes in hours shall be posted on the main entrance doors to each affected building.

1.6(14) Public use of the capitol complex grounds is restricted to the hours of 6 a.m. to 11 p.m. on a daily basis.

1.6(15) Special events.

a. The director may grant a variance from the requirements of these rules and grant a special events permit for events sponsored by the state or other governmental entities or events where a city or county government agrees to provide appropriate security and supervision if the director determines that granting the permit is consistent with the underlying purpose of these rules and that the public interest so demands.

b. As a condition of the issuance of a special event permit the director may require:

(1) The filing of a bond payable to the director, in an amount adequate to cover costs such as restoration, rehabilitation and cleanup of the area used and other costs resulting from this special event. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

*See 1992 Iowa Acts, SJR 2009, for exception within the Capitol December 3, 1992, to December 5, 1992.

(2) In addition to the requirements of 1.6(15)*"b"*(1), the director may require the acquisition of liability insurance in which the state of Iowa is named as an additional insured to protect the state.

(3) The permit may contain such conditions as are consistent with protection and use of the capitol complex for the purposes for which it is intended. It may also contain limitations on the equipment used and the time and area within which the event is allowed.

This rule is intended to implement Iowa Code section 18.10.

401—1.7(18) Solicitation and sales in state-owned and occupied buildings in metropolitan Des Moines.

1.7(1) Canteens, cafeterias and vending machines under the control of the department for the blind and gift shops under the control of the department of cultural affairs and a shoe shine stand established pursuant to subrule 1.7(4) are the only authorized methods of direct sales to employees and visitors in state-owned and occupied buildings in metropolitan Des Moines.

1.7(2) Solicitation of state employees for direct sales, within state-owned and occupied buildings is expressly forbidden. Solicitation of state employees for political contributions shall be governed by Iowa Code section 721.3.

1.7(3) Vendors seeking to sell supplies, equipment and services to state agencies shall comply with 450—2.2(18) Approved vendors, and shall contact the purchasing division to schedule sales calls. This provision is not applicable to agencies otherwise excepted by law or rule.

1.7(4) A shoe shine stand may be established in the basement of the State Capitol Building. Vendors interested in contracting for the operation of the stand shall comply with the provisions of 401—Chapter 9.

This rule is intended to implement Iowa Code sections 18.10, 303.9(2), 601C.2(2) and 601C.3.

401—1.8(18) State vehicle dispatcher vehicle assignments.

1.8(1) Pursuant to Iowa Code section 18.115(4)*"a,"* the agencies listed below shall assign all vehicles within their possession, control, or use in accordance with the standards set forth in this rule. The following agencies are subject to this rule:

a. State vehicle dispatcher;

b. State department of transportation;

c. Institutions under the control of the state board of regents;

d. The department for the blind; and

e. Any other state agency exempted from obtaining vehicles for use through the state vehicle dispatcher.

1.8(2) Definitions.

"Cargo payload" means the net cargo weight transported. The weight of the driver, passengers, and fuel shall not be considered in determining cargo payload.

"Cargo volume" means the space calculated in cubic feet behind the vehicle driver and passenger seating area. In station wagons, the cargo volume is measured to the front seating area with the second seat laid flat behind the driver.

"Passengers" means the total number of vehicle occupants transported on a trip, including the driver.

"Primary use" means the utilized application exceeds 50 percent of the miles driven annually for EPA-designated light duty trucks and vans and exceeds 75 percent of the miles driven annually for EPA-designated passenger sedans and wagons.

1.8(3) In order to maximize the average passenger miles per gallon of motor vehicle fuel consumed, vehicles shall be assigned on the following basis:

a. EPA-rated compact sedans shall carry one or two passengers and their personal effects.

b. EPA-rated compact wagons shall carry one or two passengers and a minimum cargo volume of 50 cubic feet or a minimum cargo payload of 350 pounds.

c. EPA-rated mid-size sedans shall carry three or more passengers and their personal effects.

d. EPA-rated mid-size wagons shall carry one or more passengers and a minimum cargo volume of 67 cubic feet or a minimum cargo payload of 750 pounds.

e. EPA-rated full-size sedans shall carry four or more passengers and their personal effects.

f. EPA-rated full-size wagons shall carry one or more passengers and a minimum cargo volume of 81 cubic feet.

g. Mini cargo vans shall carry a minimum cargo volume of 81 cubic feet or a minimum cargo payload of 1,360 pounds.

h. Cargo vans possessing a gross vehicle weight rating (GVWR) between 5,500 and 7,300 pounds shall carry a minimum cargo volume of 175 cubic feet or a minimum cargo payload of 1,500 pounds.

i. Cargo vans possessing a GVWR in excess of 7,300 pounds shall carry a minimum cargo volume of 255 cubic feet or a minimum cargo payload of 1,800 pounds.

j. Five-passenger mini passenger vans shall carry three or more passengers and a minimum cargo volume of 70 cubic feet or a minimum cargo payload of 1,000 pounds.

k. Seven-passenger mini passenger vans shall carry five or more passengers and their personal effects.

l. Eight-passenger standard size passenger vans shall carry six or more passengers and their personal effects.

m. Twelve-passenger standard size passenger vans shall carry eight or more passengers and their personal effects.

n. Fifteen-passenger "maxi" or "extended" passenger vans shall carry ten or more passengers and their personal effects.

1.8(4) Vehicles that are made available for temporary assignment, such as departmental pool vehicles, shall be assigned in accordance with this rule. If an appropriately classified vehicle is unavailable, the next larger available classification may be substituted. Other substitutions may be authorized in consideration of passenger physical characteristics or disabilities or any other distinguishing circumstances and conditions as determined by the state vehicle dispatcher, the director of the department of transportation, or the executive director of the board of regents for the vehicles under their respective authorities.

The state vehicle dispatcher, the director of the department of transportation, and the executive director of the board of regents shall submit biennial reports detailing the substitutions of larger vehicle classifications. The reports shall include a brief statement explaining the necessity for any substitution authorized by the respective fleets and shall be received by the director of the department of management no later than July 31, 1995, and by July 31 every other year thereafter.

1.8(5) Vehicles permanently issued to agencies or drivers shall be assigned in accordance with this rule based on the primary use of the vehicle.

1.8(6) This rule shall not apply to special work vehicles, law enforcement vehicles and vehicles propelled by alternate fuels. For purposes of this rule, a "special work vehicle" includes, but is not limited to, fire trucks, ambulances, motor homes, buses, medium- and heavy-duty trucks (26,600 lbs. GVWR and larger), highway painting trucks, truck tractors, motor graders, core drill trucks, crawler tractors, wheel tractors, aerial boom and bridge inspection trucks, draglines, truck-mounted snow blowers, front-end loaders, sweeper trucks, rollers, pavers and other highway maintenance vehicles and any other classes of vehicles of limited application approved by the state vehicle dispatcher.

This rule is intended to implement Iowa Code section 18.115(4)*"a."*

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*Effective date (10/14/87) delayed until adjournment of the 1988 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its October 1987 meeting. Delay lifted by Administrative Rules Review Committee at its meeting held November 17, 1987.

**Effective date of 1.8(4) delayed 70 days by the Administrative Rules Review Committee at its meeting held August 2, 1993.

CHAPTER 17
DECLARATORY ORDERS

401—17.1(17A) Adoption by reference. The department of general services hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "department of general services".
2. In lieu of the words "(designate office)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
3. In lieu of the words "(AGENCY NAME)", insert "DEPARTMENT OF GENERAL SERVICES".
4. In lieu of the words "_____ days (15 or less)", insert "15 days".
5. In lieu of the words "_____ days" in subrule 17.3(1), insert "5 days".
6. In lieu of the words "(designate official by full title and address)", insert "Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
7. In lieu of the words "(specify office and address)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
8. In lieu of the words "(agency name)", insert "department of general services".
9. In lieu of the words "(designate agency head)", insert "director".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 5/13/99, Notice 4/7/99—published 6/2/99, effective 7/7/99]

CHAPTER 18
PETITIONS FOR RULE MAKING

401—18.1(17A) Adoption by reference. The department of general services hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "office of the director, department of general services".

2. In lieu of the words "(AGENCY NAME)", insert "DEPARTMENT OF GENERAL SERVICES".

3. In lieu of the words "(designate official by full title and address)", insert "Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 5/13/99, Notice 4/7/99—published 6/2/99, effective 7/7/99]

CHAPTER 19
AGENCY PROCEDURE FOR RULE MAKING

401—19.1(17A) Adoption by reference. The department of general services hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "director".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
4. In lieu of the words "(designate office and telephone number)", insert "the director at (515)242-6118".
5. In lieu of the words "(designate office)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
6. In lieu of the words "(specify the office and address)", insert "Office of the Director, Department of General Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104".
7. In lieu of the words "(agency head)", insert "director".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 5/13/99, Notice 4/7/99—published 6/2/99, effective 7/7/99]

DEAF SERVICES DIVISION[429]

Created by 1986 Iowa Acts, chapter 1245, under the "umbrella" of Department of Human Rights[421]

CHAPTER 6
DECLARATORY ORDERS

429—6.1(17A) Adoption by reference. The division of deaf services hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "division of deaf services".
2. In lieu of the words "(designate office)", insert "Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
3. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF DEAF SERVICES".
4. In lieu of the words "_____ days (15 or less)", insert "10 days".
5. In lieu of the words "_____ days" in subrule 6.3(1), insert "20 days".
6. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(specify office and address)", insert "Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
8. In lieu of the words "(agency name)", insert "division of deaf services".
9. In lieu of the words "(designate agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 7
PETITIONS FOR RULE MAKING

429—7.1(17A) Adoption by reference. The division of deaf services hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "division of deaf services, department of human rights".
2. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF DEAF SERVICES".
3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 8
AGENCY PROCEDURE FOR RULE MAKING

429—8.1(17A) Adoption by reference. The division of deaf services hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "administrator".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)281-3164 voice/tty".
5. In lieu of the words "(designate office)", insert "Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 9
CONTESTED CASES

429—9.1(17A) Adoption by reference. The division of deaf services hereby adopts the contested cases segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(agency name)", insert "division of deaf services, department of human rights".
2. In lieu of the words "(designate official)", insert "administrator".
3. In subrule 7.3(2) delete the words "or by (specify rule number)".
4. In lieu of the words "(agency specifies class of contested case)", insert "division contested cases".
5. In lieu of the words "(specify office and address)", insert "Division of Deaf Services, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(designate office)", insert "division of deaf services".
7. In lieu of the words "(agency to designate person to whom violations should be reported)", insert "administrator".
8. In lieu of the words "(board, commission, director)", insert "administrator".
9. In lieu of the words "(the agency)", insert "division of deaf services".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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[Filed 5/14/99, Notice 4/7/99—published 6/2/99, effective 7/7/99]

PERSONS WITH DISABILITIES DIVISION [431]

Created within the Human Rights Department[421] by Iowa Code sections 216A.71 to 216A.79

CHAPTER 1
ORGANIZATION

431—1.1(216A) Function. The division of persons with disabilities, within the department of human rights, was created pursuant to Iowa Code section 216A.1, and is required to carry on a continuing program to promote the employment of persons with disabilities.

431—1.2(216A) Organization.

1.2(1) *Location.* The office for the division of persons with disabilities is located in the Department of Human Rights, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is (515) 242-6172 or (888) 219-0471 (v/tty). The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

1.2(2) *Method of contacting the division of persons with disabilities.* Citizens may contact the office by telephone, mail or personal visits. Citizens may call the office from within the state, station-to-station collect. Citizens who call the office may ask the staff to return the call on the division's telephone lines.

1.2(3) *Composition of staff.*

a. *Administrator.* The governor shall appoint the administrator, subject to senate confirmation. The administrator shall serve at the pleasure of the governor. The administrator is responsible for the overall administration of the program(s). The administrator determines the number and type of personnel and makes staffing and budgetary recommendations to the commission; carries out policies implemented by the commission; recruits, interviews, appoints, trains, supervises, evaluates and terminates staff; plans and oversees execution of the budget; ensures provision of adequate services in the application of policies, rules and regulations as adopted by the commission; develops, establishes and maintains cooperative working relations with public and private agencies and organizations; identifies legislative issues; interprets program objectives and promotes public interest in and acceptance of persons with disabilities; and maintains an adequate reporting system for necessary records.

b. *Consultant(s).* The consultants provide technical services related to disability in the areas of employment, independent living, physical access, housing, transportation, recreation, and equal opportunity. The consultants act as liaisons with elected officials, governmental agencies, human resource professionals, and local groups in order to clarify the needs of persons with disabilities and to establish and maintain the plans and programs dealing with disabilities. The consultants analyze and report data obtained on programs, issues and services relating to disability issues. The consultants provide education, information and referral services to citizens.

431—1.3(216A) Commission of persons with disabilities.

1.3(1) *Commission established.* The commission of persons with disabilities is established, pursuant to Iowa Code section 216A.72, consisting of 24 members and 10 nonvoting ex officio members. The members of the commission shall elect a chairperson, vice chairperson, and secretary of the commission by a majority vote at the annual meeting. All members are appointed by the governor to serve a term of two years.

1.3(2) *Meetings.* The commission of persons with disabilities meets at least once each quarter. The first regular meeting of the fiscal year is the annual meeting. A majority of the members shall constitute a quorum. All meetings will be held in facilities accessible and functional for people with physical disabilities. A good faith effort will be made to have all written materials available in braille or on audiotape if requested by people with visual impairments and to provide sign language interpreters for people who are deaf if requests are received within a reasonable time prior to the meeting. Notice of a meeting is published at least 72 hours prior to the meeting and will contain the specific date, time and place of the meeting. Agenda are available to any interested persons prior to the meeting. All meetings are open to the public unless a closed session is voted by two-thirds of the entire membership or by all members present, pursuant to Iowa Code section 21.5. The operation of a commission meeting will be governed by the following rules of procedure:

a. When a quorum is present, a position is carried by an affirmative vote of a majority of the members present.

b. Persons wishing to appear before the commission shall submit the request to the commission office not less than 14 days prior to the meeting. Presentations may be made at the discretion of the chair and only upon matters appearing on the agenda.

c. Special meetings may be called by the chairperson upon finding good cause and shall be held in strict accordance with Iowa Code chapter 21. Special meetings may also be called by a majority of the membership.

d. Written materials to be presented at commission meetings should be submitted to the office at least seven working days prior to the meeting.

e. Cameras and recording devices may be used at open meetings, provided they do not obstruct the meeting. The presiding officer may request a person using such a device to discontinue its use when it is obstructing the meeting. If a person fails to comply with the request, the presiding officer shall order that person excluded from the meeting.

f. The presiding officer may exclude any person from the meeting for repeated behavior that disrupts or obstructs the meeting.

g. Any vote by mail shall have the tabulated results presented at the next regular meeting of the commission and the ballots retained for a period of six months for confirmation of results.

h. Cases not covered by these rules shall be governed by Robert's Rules of Order (newly revised).

1.3(3) *Minutes.* Minutes of the commission meetings are prepared and sent to commission members at least two weeks before the next regular meeting. Approved minutes are available at the commission office for inspection during business hours. Copies may be obtained pursuant to 421—2.3(22) by contacting the office.

1.3(4) *Duties.* Duties of the commission are listed in Iowa Code section 216A.77.

1.3(5) *Committees and task forces.* Committees comprised of commission members and task forces comprised of commission members and nonmembers may be assigned by the presiding officer to accomplish the duties of the commission.

1.3(6) *Executive committee.* The executive committee shall be comprised of the officers of the commission and three other members appointed by the chair and approved by the membership. The executive committee shall function as the governing body of the commission between commission meetings and shall make recommendations to the commission for new policies. It is empowered to take action on behalf of the commission when such action is required between regular meetings and deliberation by the full commission is not feasible. Furthermore, the executive committee shall:

a. Screen and recommend two or more candidates to the commission for appointment as administrator, and

b. Conduct the administrator's annual performance evaluation and report to the commission on the evaluation results.

Notice of executive committee meeting shall be provided to all commission members no later than 48 hours in advance of the scheduled meeting.

1.3(7) *Powers.* The commission shall have all powers necessary to carry out the functions and duties specified in Iowa Code section 216A.77 including, but not limited to, the power to establish committees and task forces, to solicit and accept gifts and grants, to adopt rules according to chapter 17A for the commission and division, and to contract with public and private groups to conduct its business.

1.3(8) *Report.* The commission shall make a report of its activities and recommendations to the general assembly no later than September 30 of each year.

1.3(9) *Conflict of interest.* A conflict of interest exists when members of the commission participate in a way that directly affects the personal or financial interests of the commission members. In order to avoid conflict of interest problems, commission members who have a personal or financial interest in an action must abstain from participating in the entire process which would include both discussion and voting. The commission members who have or think they may have a conflict of interest should declare that there is or may be a conflict of interest and request a determination from the commission. Where a conflict of interest is determined to exist, commission members should abstain from voting and should be recorded as abstaining when votes are taken.

These rules are intended to implement Iowa Code section 216A.71 to 216A.79.

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

431—2.1(22) Adoption by reference. The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

431—2.2(22) Custodian of records. The custodian for the records maintained by this division is the division administrator.

These rules are intended to implement Iowa Code chapters 17A and 22 and Iowa Code section 216A.6.

[Filed emergency 8/19/88 after Notice 5/18/88—published 9/7/88, effective 8/19/88]

CHAPTER 3
ADVISORY COUNCIL ON HEAD INJURIES

Transferred to Department of Public Health, 641—Chapter 55, IAB 9/30/92, effective 9/14/92.

CHAPTER 4
PETITIONS FOR RULE MAKING

431—4.1(17A) Adoption by reference. The division of persons with disabilities hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "division of persons with disabilities, department of human rights".
2. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF PERSONS WITH DISABILITIES".
3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 5/14/99, Notice 4/7/99—published 6/2/99, effective 7/7/99]

CHAPTER 5
AGENCY PROCEDURE FOR RULE MAKING

431—5.1(17A) Adoption by reference. The division of persons with disabilities hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "administrator".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)281-8725 voice/tty".
5. In lieu of the words "(designate office)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 5/14/99, Notice 4/7/99—published 6/2/99, effective 7/7/99]

CHAPTER 6
DECLARATORY ORDERS

431—6.1(17A) Adoption by reference. The division of persons with disabilities hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "division of persons with disabilities".
2. In lieu of the words "(designate office)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
3. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF PERSONS WITH DISABILITIES".
4. In lieu of the words "_____ days (15 or less)", insert "10 days".
5. In lieu of the words "_____ days" in subrule 6.3(1), insert "20 days".
6. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(specify office and address)", insert "Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
8. In lieu of the words "(agency name)", insert "division of persons with disabilities".
9. In lieu of the words "(designate agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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"Qualifying quarters" includes all of the qualifying quarters of coverage as defined under Title II of the Social Security Act worked by a parent of an alien while the alien was under age 18 and all of the qualifying quarters worked by a spouse of the alien during their marriage if the alien remains married to the spouse or the spouse is deceased. No qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien if the parent or spouse of the alien received any federal means-tested public benefit during the period for which the qualifying quarter is so credited.

75.11(2) *Citizenship and alienage.*

a. To be eligible for Medicaid a person must be one of the following:

(1) A citizen or national of the United States.

(2) A qualified alien as defined in subrule 75.11(1) residing in the United States prior to August 22, 1996.

(3) A qualified alien who entered the United States on or after August 22, 1996, and who is:

- A refugee who is admitted to the United States under Section 207 of the Immigration and Nationality Act;
- Granted asylum under Section 208 of the Immigration and Nationality Act;
- An alien whose deportation is being withheld under Section 243(h) of the Immigration and Nationality Act; or
- A veteran with a discharge characterized as an honorable discharge and not on account of alienage, an alien who is on active duty in the Armed Forces of the United States other than active duty for training, or the veteran's spouse or unmarried dependent child.

(4) A qualified alien who entered the United States on or after August 22, 1996, and who has resided in the United States for a period of at least five years.

b. As a condition of eligibility, each recipient shall complete and sign Form 470-2549, Statement of Citizenship Status, attesting to the recipient's citizenship or alien status. The form shall be signed by the recipient, or when the recipient is incompetent or deceased, someone acting responsibly on the recipient's behalf. When both parents are in the home, both shall sign the form. An adult recipient shall sign the form for dependent children. As a condition of eligibility, all applicants for Medicaid shall attest to their citizenship status by signing the application form which contains the same declaration. As a condition of continued eligibility, recipients of SSI-related Medicaid not actually receiving SSI who have been continuous recipients since August 1, 1988, shall attest to their citizenship status by signing the application form which contains a similar declaration at time of review.

75.11(3) *Deeming of sponsor's income and resources.*

a. In determining the eligibility and amount of benefits of an alien, the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to Section 213A of the Immigration and Nationality Act (as implemented by the Personal Responsibility and Work Reconciliation Act of 1996) on behalf of the alien.

(2) The income and resources of the spouse of the person who executed the affidavit of support.

b. When an alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act or has worked 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with qualifying quarters as defined at subrule 75.11(1) and, in the case of any qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefits, as defined in subrule 75.11(1), during any period, deeming of the sponsor's income and resources no longer applies.

75.11(4) *Eligibility for payment of emergency medical services.* Aliens who do not meet the provisions of subrule 75.11(2) and who would otherwise qualify except for their alienage status are eligible to receive Medicaid for emergency medical care as defined in subrule 75.11(1). To qualify under these provisions, the alien must meet all eligibility criteria, including state residence requirements provided at rules 441—75.10(249A) and 441—75.53(249A). However, the requirements of rule 441—75.7(249A) and subrules 75.11(2) and 75.11(3) do not apply to eligibility for aliens seeking the care and services necessary for the treatment of an emergency medical condition not related to an organ transplant procedure furnished on or after August 10, 1993.

441—75.12(249A) Persons who enter jails or penal institutions. A person who enters a jail or penal institution, including a work release center, shall not be eligible for Medicaid.

441—75.13(249A) Categorical relatedness.

75.13(1) *FMAP-related Medicaid eligibility.* Medicaid eligibility for persons who are under the age of 21, pregnant women, children, or specified relatives of dependent children who are not blind or disabled shall be determined using the income criteria in effect for the family medical assistance program (FMAP) as provided in subrule 75.1(14) unless otherwise specified. Income shall be considered prospectively.

75.13(2) *SSI-related Medicaid.* Except as otherwise provided in this rule and in 441—Chapters 75 and 76, persons who are 65 years of age or older, blind, or disabled are eligible for Medicaid only if eligible for the Supplemental Security Income (SSI) program administered by the United States Social Security Administration. The statutes, regulations, and policy governing eligibility for SSI are found in Title XVI of the Social Security Act (42 U.S.C. Sections 1381 to 1383f), in the federal regulations promulgated pursuant to Title XVI (20 CFR Sections 416.101 to 416.2227), and in Part 5 of the Program Operations Manual System published by the United States Social Security Administration. The Program Operations Manual System is available at Social Security Administration offices in Ames, Burlington, Carroll, Cedar Rapids, Clinton, Creston, Davenport, Decorah, Des Moines, Dubuque, Fort Dodge, Iowa City, Marshalltown, Mason City, Oskaloosa, Ottumwa, Sioux City, Spencer, Storm Lake, and Waterloo, or through the Department of Human Services, Division of Medical Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

For SSI-related Medicaid eligibility purposes, income shall be considered prospectively.

Income that a person contributes to a trust as specified at 75.24(3)*"b"* shall not be considered for purposes of determining eligibility for SSI-related Medicaid.

For purposes of determining eligibility for SSI-related Medicaid, the SSI conditional eligibility process, by which a client may receive SSI benefits while attempting to sell excess resources, found at 20 CFR 416.1240 to 416.1245, is not considered an eligibility methodology.

In the absence of other evidence, the value of a life estate or remainder interest in property shall be determined using the following table by multiplying the fair market value of the entire underlying property (including all life estates and all remainder interests) by the life estate or remainder interest decimal corresponding to the age of the individual who owns the life estate or remainder interest.

If a Medicaid applicant or recipient disputes the value determined using the following table, the applicant or recipient may submit other evidence and the value of the life estate or remainder interest shall be determined based on the preponderance of all the evidence submitted to or obtained by the department, including the value given by the following table.

Age	Life Estate	Remainder	Age	Life Estate	Remainder	Age	Life Estate	Remainder
0	.97188	.02812	37	.93026	.06974	74	.53862	.46138
1	.98988	.01012	38	.92567	.07433	75	.52149	.47851
2	.99017	.00983	39	.92083	.07917	76	.51441	.49559
3	.99008	.00992	40	.91571	.08429	77	.48742	.51258
4	.98981	.01019	41	.91030	.08970	78	.47049	.52951
5	.98938	.01062	42	.90457	.09543	79	.45357	.54643
6	.98884	.01116	43	.89855	.10145	80	.43569	.56341
7	.98822	.01178	44	.89221	.10779	81	.41967	.58033
8	.98748	.01252	45	.88558	.11442	82	.40295	.59705
9	.98663	.01337	46	.87863	.12137	83	.38642	.61358
10	.98565	.01435	47	.87137	.12863	84	.36998	.63002
11	.98453	.01547	48	.86374	.13626	85	.35359	.64641
12	.98329	.01671	49	.85578	.14422	86	.33764	.66236
13	.98198	.01802	50	.84743	.15257	87	.32262	.67738
14	.98066	.01934	51	.83674	.16126	88	.30859	.69141
15	.97937	.02063	52	.82969	.17031	89	.29526	.70474
16	.97815	.02185	53	.82028	.17972	90	.28221	.71779
17	.97700	.02300	54	.81054	.18946	91	.26955	.73045
18	.97590	.02410	55	.80046	.19954	92	.25771	.74229
19	.97480	.02520	56	.79006	.20994	93	.24692	.75308
20	.97365	.02635	57	.77931	.22069	94	.23728	.76272
21	.97245	.02755	58	.76822	.23178	95	.22887	.77113
22	.97120	.02880	59	.75675	.24325	96	.22181	.77819
23	.96986	.03014	60	.74491	.25509	97	.21550	.78450
24	.96841	.03159	61	.73267	.26733	98	.21000	.79000
25	.96678	.03322	62	.72002	.27998	99	.20486	.79514
26	.96495	.03505	63	.70696	.29304	100	.19975	.80025
27	.96290	.03710	64	.69352	.30648	101	.19532	.80468
28	.96062	.03938	65	.67970	.32030	102	.19054	.80946
29	.95813	.04187	66	.66551	.33449	103	.18437	.81563
30	.95543	.04457	67	.65098	.343902	104	.17856	.82144
31	.95254	.04746	68	.63610	.363690	105	.16962	.83038
32	.94942	.05058	69	.62086	.37914	106	.15488	.84512
33	.94608	.05392	70	.60522	.39478	107	.13409	.86591
34	.94250	.05750	71	.58914	.41086	108	.10068	.89932
35	.93868	.06132	72	.57261	.42739	109	.04545	.95455
36	.93460	.06540	73	.55571	.44429			

441—75.14(249A) Establishing paternity and obtaining support.

75.14(1) As a condition of eligibility, applicants and recipients of Medicaid in households with an absent parent shall cooperate in obtaining medical support for the applicant or recipient as well as for any other person in the household for whom Medicaid is requested and for whom the person can legally assign rights for medical support, except when good cause as defined in subrule 75.14(8) for refusal to cooperate is established.

a. The applicant or recipient shall cooperate in the following:

(1) Identifying and locating the parent of the child for whom Medicaid is requested.

(2) Establishing the paternity of a child born out of wedlock for whom Medicaid is requested.

(3) Obtaining medical support and payments for medical care for the applicant or recipient and for a child for whom Medicaid is requested.

(4) Rescinded IAB 2/3/93, effective 4/1/93.

b. A timely and adequate notice as defined in 441—subrule 7.7(1) shall be provided to the recipient informing the recipient of a decision to discontinue payment of the health insurance premium when the recipient no longer meets the eligibility requirements of the program or fails to cooperate in providing information to establish eligibility.

75.22(10) *Confidentiality.* The department shall protect the confidentiality of persons participating in the program in accordance with Iowa Code chapter 141. When it is necessary for the department to contact a third party to obtain information in order to determine initial or ongoing eligibility, a Consent to Release or Obtain Information, Form 470-0429, shall be signed by the recipient authorizing the department to make the contact.

This rule is intended to implement Iowa Code section 249A.4.

441—75.23(249A) Disposal of assets for less than fair market value after August 10, 1993. In determining Medicaid eligibility for persons described in 441—Chapters 75, 83, and 86, a transfer of assets occurring after August 10, 1993, will affect Medicaid payment for medical services as provided in this rule.

75.23(1) *Ineligibility for services.*

a. If an institutionalized individual or the spouse of the individual disposed of assets for less than fair market value on or after the look-back date specified in 75.23(2), the institutionalized individual is ineligible for medical assistance for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and home- and community-based waiver services during the period beginning on the first day of the first month during or after which assets were transferred for less than fair market value and which does not occur in any other periods of ineligibility under this rule and equal to the number of months specified in 75.23(3).

b. If a noninstitutionalized individual or the spouse of the individual disposed of assets for less than fair market value on or after the look-back date specified in 75.23(2), the individual is ineligible for medical assistance for home health care services, home and community care for functionally disabled elderly individuals, personal care services, and other long-term care services during the period beginning on the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this rule and equal to the number of months specified in 75.23(3).

75.23(2) *Look-back date.* The look-back date is the date that is 36 months (or, in the case of payments from a trust or portion of a trust that are treated as assets disposed of by the individual, 60 months) before the date an institutionalized individual is both an institutionalized individual and has applied for medical assistance or the date the noninstitutionalized individual applies for medical assistance.

75.23(3) *Period of ineligibility.* The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private pay rate for nursing facility services at the time of application. The average statewide cost to a private pay resident shall be determined by the department and updated annually for nursing facilities. For the period from July 1, 1999, through June 30, 2000, this average statewide cost shall be $2,673 per month or $87.87 per day.

75.23(4) *Reduction of period of ineligibility.* The number of months of ineligibility otherwise determined with respect to the disposal of an asset shall be reduced by the months of ineligibility applicable to the individual prior to a change in institutional status.

75.23(5) *Exceptions.* An individual shall not be ineligible for medical assistance, under this rule, to the extent that:

a. The assets transferred were a home and title to the home was transferred to either:

(1) A spouse of the individual.

(2) A child who is under the age of 21 or is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c.

(3) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the individual became institutionalized.

(4) A son or daughter of the individual who was residing in the individual's home for a period of at least two years immediately before the date of institutionalization and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

b. The assets were transferred:

(1) To the individual's spouse or to another for the sole benefit of the individual's spouse.

(2) From the individual's spouse to another for the sole benefit of the individual's spouse.

(3) To a trust established solely for the benefit of a child who is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c.

(4) To a trust established solely for the benefit of an individual under 65 years of age who is disabled as defined in 42 U.S.C. Section 1382c.

c. A satisfactory showing is made that:

(1) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration.

(2) The assets were transferred exclusively for a purpose other than to qualify for medical assistance.

(3) All assets transferred for less than fair market value have been returned to the individual.

d. The denial of eligibility would work an undue hardship. Undue hardship shall exist only when all of the following conditions are met:

(1) Application of the transfer of asset penalty would deprive the individual of food, clothing, shelter, medical care, or other necessities of life, such that the individual's health or life would be endangered.

(2) The person who transferred the resource or the person's spouse has exhausted all means including legal remedies and consultation with an attorney to recover the resource.

(3) The person's remaining available resources (after the attribution for the community spouse) are less than the monthly statewide average cost of nursing facility services to a private pay resident, counting the value of all resources except for:

1. The home if occupied by a dependent relative or if a licensed physician verifies that the person is expected to return home.
2. Household goods.
3. A vehicle required by the client for transportation.
4. Funds for burial of $4,000 or less.

Hardship will not be found if the resource was transferred to a person who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless the client demonstrates that payments cannot be obtained from the funds of the person who handled the financial affairs to pay for nursing facility services.

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◊Two or more ARCs

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c. The person shall cooperate with the child support recovery unit to the extent of supplying all known information and documents pertaining to the location of the noncustodial parent and taking action as may be necessary to secure or enforce a support obligation or establish paternity or to secure medical support. This includes completing and signing documents determined to be necessary by the state's attorney for any relevant judicial or administrative process.

95.19(2) *Failure to cooperate.* The local child support recovery unit shall make the determination of whether or not a person has cooperated with the unit. The child support recovery unit shall send notice of a determination of noncooperation to the person on Form 470-3400, Notice of Noncooperation, and notify the FIP and Medicaid programs, as appropriate, of the noncooperation determination and the reason for the determination. The FIP and Medicaid programs shall take appropriate sanctioning actions as provided in statute and rules.

95.19(3) *Good cause or other exception.*

a. A person who is a recipient of FIP assistance may claim a good cause or other exception for not cooperating, taking into consideration the best interests of the child as provided in 441—subrules 41.22(8) through 41.22(12).

b. A person who is a recipient of Medicaid may claim a good cause or other exception for not cooperating, taking into consideration the best interests of the child as provided in 441—subrule 75.14(3).

This rule is intended to implement Iowa Code section 252B.3 as amended by 1997 Iowa Acts, House File 612, section 26.

441—95.20(252B) Cooperation of public assistance applicants in establishing and obtaining support. If a person who is an applicant of FIP or Medicaid is required to cooperate in establishing paternity, in establishing, modifying, or enforcing child or medical support, or in enforcing spousal support, the requirements in 441—subrule 41.22(6) and rule 441—75.14(249A) shall apply. The appropriate staff in the FIP and Medicaid programs are designees of the child support recovery unit to determine noncooperation and issue notices of that determination.

This rule is intended to implement Iowa Code section 252B.3 as amended by 1997 Iowa Acts, House File 612, section 26.

441—95.21(252B) Cooperation in establishing and obtaining support in nonpublic assistance cases.

95.21(1) *Requirements.* The individual receiving nonpublic assistance support services shall cooperate with the child support recovery unit by meeting all the requirements of rule 441—95.19(252B), except that the individual may not claim good cause or other exception for not cooperating.

95.21(2) *Failure to cooperate.* The child support recovery unit shall make the determination of whether or not the nonpublic assistance applicant or recipient of services has cooperated. Noncooperation shall result in termination of support services. An applicant or recipient may also request termination of services under subrule 95.14(3).

This rule is intended to implement Iowa Code section 252B.4 as amended by 1997 Iowa Acts, House File 612, sections 27, 28 and 29.

441—95.22(252B) Charging pass-through fees. Pass-through fees are fees or costs incurred by the department for service of process, genetic testing and court costs if the entity providing the service charges a fee for the services. The child support recovery unit may charge pass-through fees to persons who receive continued services according to rule 441—95.18(252B) and to other persons receiving nonassistance services, except no fees may be charged an obligee residing in a foreign country or the foreign country if the unit is providing services under paragraph 95.2(2)"*b.*"

This rule is intended to implement Iowa Code section 252B.4 as amended by 1997 Iowa Acts, House File 612, sections 27, 28 and 29.

441—95.23(252B) Reimbursing assistance with collections of assigned support. For an obligee and child who currently receive assistance under the family investment program, the full amount of any assigned support collection that the department receives shall be distributed according to rule 441—95.3(252B) and retained by the department to reimburse the family investment program assistance.

This rule is intended to implement Iowa Code section 252B.15.

441—95.24(252B) Child support account. The child support recovery unit shall maintain a child support account for each client. The account, representing money due the department, shall cover all periods of time public assistance has been paid, commencing with the date of the assignment. The child support recovery unit will not maintain an interest-bearing account.

This rule is intended to implement Iowa Code chapter 252C.

441—95.25(252B) Emancipation verification. The child support recovery unit (CSRU) may verify whether a child will emancipate according to the provisions established in the court order prior to the child's eighteenth birthday.

95.25(1) *Verification process.* CSRU shall send Form 470-2562, Emancipation Verification, to the obligor and obligee on a case if CSRU has an address.

95.25(2) *Return information.* The obligor and obligee shall be asked to complete and return the form to the unit. CSRU shall use the information provided by the obligor or obligee to determine if the status of the child indicates that any previously ordered adjustments related to the obligation and a child's emancipation are necessary on the case.

95.25(3) *Failure to return information.* If the obligor and obligee fail to return the questionnaire, CSRU shall apply the earliest emancipation date established in the support order to the case and implement changes in support amounts required in the support order.

95.25(4) *Conflicting information returned.* If conflicting information is returned or made known to CSRU, CSRU shall have the right to verify the child's status through sources other than the obligor and obligee.

This rule is intended to implement Iowa Code sections 252B.3 and 252B.4.

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◊Two ARCs

b. Policies and procedures shall be developed and maintained in consultation with representatives of the medical staff, nursing staff, food and nutrition service staff, pharmacy staff, and administration to govern the provision of food and nutrition services. Policies and procedures shall be approved by the medical staff, administration, and governing body.

c. A current diet manual approved by the dietitian and the medical staff shall be used as the basis for diet orders and for planning therapeutic diets. The diet manual shall be reviewed, revised and updated at least every five years. Copies of the diet manual shall be readily available to all medical, nursing, and food service personnel.

d. Therapeutic diets shall be provided as prescribed by the attending physician and shall be planned, prepared, and served with supervision or consultation from the licensed dietitian. Persons responsible for therapeutic diets shall have sufficient knowledge of food to make appropriate substitutions when necessary.

e. The patient's diet card shall state likes, dislikes, food allergies, and other pertinent information.

f. Menus.

(1) Menus for regular and therapeutic diets shall be written, approved, dated and available in the food service area at least one week in advance.

(2) If meals served vary from the planned menu, the change shall be noted in writing as part of the available menu. A copy of the menu as served shall be kept on file for at least 30 days.

(3) Menus should be planned with consideration for cultural and religious background and food habits of patients.

(4) Standardized recipes with nutritional analysis adjusted to number of portions shall be maintained and used in food preparation.

g. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance. Food shall be served attractively at appropriate and safe temperatures and in a form to meet individual needs.

h. Nutritional care.

(1) Nutrition screening shall be conducted by qualified hospital staff to determine the patient's need for a comprehensive nutrition assessment by the licensed dietitian.

(2) Nutritional care shall be integrated in the patient care plan, as appropriate, based upon the patient's diagnosis and length of stay.

(3) The licensed dietitian shall record, in the patient's medical record, any observations and information pertinent to medical nutrition therapy.

(4) Pertinent dietary records shall be included in the patient's transfer discharge record to ensure continuity of nutritional care.

(5) Discharge nutrition counseling and education shall be provided to the patient and family as ordered by the physician, requested by the patient or deemed appropriate by the licensed dietitian.

i. In-service training, in accordance with hospital policies, shall be provided for all food and nutrition service personnel. A record of subject areas covered, date, and duration of each session and attendance lists shall be maintained. In-service records shall be kept for a minimum of one year.

j. Food storage.

(1) Food storage areas shall be clean at all times.

(2) Dry or staple items shall be stored at least six inches (15 cm) above the floor in a ventilated room, not subject to sewage or wastewater backflow, contamination by condensation, leakage, rodents or vermin in accordance with the Food Code, 1999 Edition, U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Washington, DC 20204.

(3) All readily perishable foods or beverages capable of supporting rapid and progressive growth of microorganisms that can cause food infections or food intoxication shall be maintained at temperatures of 40°F or below or at 140°F or above, at all times, except during necessary periods of preparation and service. Frozen food shall be stored at 0°F or below.

(4) There shall be a reliable thermometer in each refrigerator, freezer, and in storerooms used for food.

(5) Pesticides, other toxic substances, and drugs shall not be stored in the food preparation or storage areas used for food or food preparation equipment and utensils. Soaps, detergents, cleaning compounds, or similar substances shall not be stored in food storage rooms or areas.

(6) On the nursing unit, a separate patient food storage area shall be maintained that ensures proper temperature control.

(7) All patient food shall be covered, labeled, and dated in all food storage areas throughout the hospital.

k. Sanitation. Unless otherwise indicated, the sanitary provisions of the 1999 Food Code shall apply.

(1) All food service areas shall be kept clean; free from litter and rubbish; and protected from rodents, animals, roaches, flies and other insects.

(2) All utensils, counters, shelves, and equipment shall be kept clean; maintained in good repair; and shall be free from breaks, corrosion, open seams, cracks, and chipped areas.

(3) Plasticware, china, and glassware that are unsightly, unsanitary, or hazardous because of chips, cracks, or loss of glaze shall be discarded.

(4) Ice that is used in connection with food and drinks shall be from a sanitary source and shall be handled and dispensed in a sanitary manner.

(5) Wastes from the food service that are not disposed of by mechanical means shall be kept in leakproof, nonabsorbent, tightly closed containers when not in immediate use and shall be disposed of frequently.

l. All utensils used for eating, drinking, and the preparation and serving of food and drink shall be cleaned and disinfected or discarded after each usage.

(1) If utensils are washed and rinsed in a three-compartment sink, the utensils shall be thoroughly washed in hot water at a minimum temperature of 110°F using soap or detergent, rinsed in hot water to remove soap or detergent, and sanitized by one of the following methods:

1. Immersion for at least 30 seconds in clean water at 180°F.

2. Immersion in water containing bactericidal chemical at a minimum concentration as recommended by the manufacturer.

(2) If utensils are washed and rinsed in an automatic dishmachine, one of the following methods shall be used:

1. When a conventional dishmachine is utilized, the utensils shall be washed in a minimum of 140-160°F using soap or detergent and sanitized in a hot water rinse of not less than 170-180°F.

2. When a chemical dishmachine is utilized, the utensils shall be washed in a minimum of 120°F using soap or detergent and sanitized using a chemical sanitizer that is automatically dispensed by the machine and is in a concentration equivalent to 50 parts per million (ppm) available chloride.

(3) After sanitization, the utensils shall be allowed to drain and dry in racks or baskets on nonabsorbent surfaces. Drying cloths shall not be used.

51.20(3) *Food and nutrition service staff.*

a. A licensed dietitian shall be employed on a full-time, part-time or consulting basis. Part-time or consultant services shall be provided on the premises at appropriate times on a regularly scheduled basis. These services shall be of sufficient duration and frequency to provide continuing liaison with medical and nursing staffs, advice to the administrator, patient counseling, guidance to the supervisor and staff of the food and nutrition service, approval of all menus, and participation in the development or revision of departmental policies and procedures and in planning and conducting in-service education programs.

b. If a licensed dietitian is not employed full-time, then one must be employed on a part-time or consultation basis with an additional full-time person who has completed a 250-hour dietary manager course and who shall be employed to be responsible for the operation of the food service.

c. Sufficient food service personnel shall be employed, oriented, trained, and their working hours scheduled to provide for the nutritional needs of the patients and to maintain the food service areas. If food service employees are assigned duties in other service areas, those duties shall not interfere with the sanitation, safety, or time required for food service work assignments.

d. Hygiene of food service staff.

(1) Food service personnel shall be trained in basic food sanitation techniques; shall be clean; and wear clean clothing, including a cap or a hair net sufficient to contain and restrain the shedding of hair. Beards and mustaches that are not closely cropped and neatly trimmed shall be covered.

(2) Food service personnel shall be excluded from duty when affected by skin infection or communicable diseases in accordance with the hospital's infection-control policies.

(3) Employees' street clothing stored in the food service area shall be in a closed area.

(4) Kitchen sinks shall not be used for hand washing. Separate hand-washing facilities with soap, running water, and single-use towels shall be properly and conveniently located.

(5) Persons other than food service personnel shall not be allowed in the food preparation area unless required to do so in the performance of their duties.

51.20(4) *Food service equipment and supplies.*

a. Equipment of the type and in the amount necessary for the proper preparation, serving and storing of food and for proper dishwashing shall be provided and maintained in good working order.

(1) The food service area shall be ventilated in a manner that will maintain comfortable working conditions, remove objectionable odors and fumes, and prevent excessive condensation.

(2) Equipment necessary for preparation and maintenance of menus, records, and references shall be provided.

(3) Fixed and mobile equipment in the food service area shall meet the American Institute of Architects Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1996-1997 Edition, and the 1999 Food Code. Equipment shall be located to ensure sanitary and safe operation and shall be of sufficient size to handle the needs of the hospital.

b. Food supplies.

(1) At least one week's supply of staple foods and a reasonable supply of perishable foods shall be maintained on the premises. Supplies shall be appropriate to meet the requirements of the menu.

(2) All food and beverages shall be of good quality and procured from sources approved or considered satisfactory by federal, state, and local authorities. Food or beverages in unlabeled, rusty, leaking, broken, or damaged containers shall not be accepted or retained.

(3) Milk and milk products shall be processed or manufactured in milk product plants meeting the requirements of the Iowa department of agriculture and land stewardship.

(4) Milk may be served in individual, single-use containers. Homogenized milk may be served from a dispensing device that has been approved for such use. Milk served from an approved device shall be dispensed directly into the glass or other container from which the patient drinks.

(5) Catered foods and beverages from a source outside the hospital shall be prepared, packed, properly identified, stored and transported in compliance with these regulations and other applicable federal, state, and local codes.

(6) Foods held in refrigerated or other storage areas shall be appropriately covered. Food that was prepared and not served shall be stored appropriately, clearly identifiable, and dated.

51.20(5) *Food service space.*

a. Adequate space for the preparation and serving of food shall be provided. Equipment shall be placed to provide aisles of sufficient width to permit easy movement of personnel, mobile equipment, and supplies.

b. Well-ventilated food storage areas of adequate size shall be provided.

c. Adequate usable refrigerated space shall be maintained for the storage of frozen and chilled foods.

d. Adequate space shall be maintained to accommodate equipment, personnel, and procedures necessary for proper cleaning and sanitizing of dishes and other utensils.

481—51.21 Reserved.

481—51.22(135B) Equipment for patient care. Hospital equipment shall be selected, maintained and used in accordance with the needs of the patients.

51.22(1) *Furnishings, supplies and equipment.*

a. *Bed.* A hospital bed with suitable mattress, pillows and necessary coverings shall be provided for each patient. After the discharge of each patient, the bed and room furnishings shall be thoroughly cleansed.

b. *Bedside furniture.* There shall be a chair and bedside table for each patient, unless clinically contraindicated.

c. *Linen.* A supply of towels, washcloths, bath blankets and all other linen which comes directly in contact with the patient shall be provided as needed for each individual patient. No such linen shall be interchangeable from one patient to another before being properly cleansed or laundered.

d. *Individual equipment.* Individual bedpans, wash basins and mouthwash cups shall be provided for each patient. This equipment shall be properly cleansed and stored. Individual thermometers shall be supplied and disinfected before each use.

51.22(2) *Hot water bags.* Hot water bags shall be of the proper temperature to protect against burning, and shall be covered before being placed in a bed. Any electrical heating appliance used for patient care shall be carefully checked periodically.

51.22(3) *Restraints.* Rescinded IAB 3/30/94, effective 5/4/94. See rule 51.7(135B).

51.22(4) *Signals.* Means of signaling nurses shall be provided within easy reach of all patients confined to bed.

51.51(8) *Radiology suite.* The suite shall be designed and equipped in accordance with the following references:

a. National Council on Radiation Protection and Measurements Reports (NCRP), Nos. 33 and 49.

b. Iowa department of public health 641—Chapters 38 to 41.

51.51(9) *Waste processing services—storage and disposal.* In lieu of the waste processing service requirements in the "Guidelines for Construction and Equipment of Hospital and Healthcare Facilities" in paragraph 51.51(2)"*a,*" space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal or a combination of these techniques. These techniques must comply with the following environmental protection commission rules: rules 567—64.2(455B) and 64.3(455B); solid waste requirements of rules 567—101.1(455B,455D), 102.1(455B), 104.1(455B), and 567—Chapters 106, 118 and 119; and air quality requirements of 567—subrules 22.1(1) and 23.4(12).

51.51(10) *Codes and standards.* See 481—subrule 51.50(10).

481—51.52(135B) Critical access hospitals. Critical access hospitals shall meet the following criteria:

51.52(1) The hospital shall be no less than 35 miles from another hospital or no less than 15 miles over secondary roads or shall be designated by the department of public health as a necessary provider of health care.

51.52(2) The hospital shall be a public or nonprofit hospital and shall be located in a county in a rural area.

51.52(3) The hospital shall provide 24-hour emergency care services as described in 481 IAC 51.30(135B).

51.52(4) The hospital shall maintain no more than 15 acute care inpatient beds or, in the case of a hospital having a swing-bed agreement, no more than 25 inpatient beds; and the number of beds used for acute inpatient services shall not exceed 15 beds.

51.52(5) The hospital shall meet the Medicare conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F as of October 1, 1997.

51.52(6) The hospital shall continue to comply with all general hospital license requirements as defined in 481 IAC 51.

These rules are intended to implement Iowa Code chapter 135B.

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◊Three ARCs
††Two ARCs

TITLE V
MANAGEMENT AREAS AND PRACTICES

CHAPTER 51
GAME MANAGEMENT AREAS

[Prior to 12/31/86, Conservation Commission[290] Chs 1,2,4,8,9,24]

571—51.1(481A) Definitions.

"Blind" means a constructed place of ambush or concealment for the purpose of hunting, observing, or photographing any species of wildlife.

"Commission" means the natural resource commission.

"Decoy" means a bird, or animal, or a likeness of one, used to lure game within shooting range.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or a designee.

"Handicapped person" means an individual commonly termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a simple or double amputee of the legs; or a person with any other physical affliction which makes it impossible to ambulate successfully without the use of a motor vehicle.

571—51.2(481A) Jurisdiction. All lands and waters under the jurisdiction of the department are established as game management areas under the provisions of Iowa Code section 481A.6.

571—51.3(481A) Use of firearms.

51.3(1) *Restrictions.* The use or possession of firearms on certain game management areas is restricted.

a. Banner Mine Area. Target shooting with firearms on the Banner Mine Area in Warren County is restricted to the use of specific types of firearms in designated areas only. Designated areas will be posted with official signs. Target practice, for the purpose of this rule, is defined as the discharge of a firearm for any reason other than the taking of, or the attempting to take, game or a furbearing animal.

(1) Any person target shooting with any type of handgun, any type of rifle or shooting shotgun slugs through a shotgun must fire through one of the tubes provided at the firing points on the rifle and pistol range.

(2) It is a violation of these rules to place any type of target on the top of the earth backstop or to fire at any target placed on top of the backstop.

(3) The shotgun range is restricted to the use of shotguns and the shooting of shotshells only.

b. Mines of Spain Area. Rescinded IAB 3/12/97, effective 4/16/97.

c. McIntosh Wildlife Area. The use or possession of firearms, except shotguns, on any portion of the McIntosh Wildlife Area in Cerro Gordo County is prohibited.

d. Cottonwood Wildlife Area. The use or possession of firearms, except shotguns shooting shot only, on any portion of the Cottonwood Wildlife Area in Polk County is prohibited.

e. Lake Darling Recreation Area. Hunting, trapping and use of weapons of any kind, except for the use of bow and arrow to take rough fish and except as provided in 571—subrule 61.6(3) and 571—Chapter 105, are prohibited.

f. *Badger Creek Area.* Target shooting with firearms on the Badger Creek Wildlife Area in Madison County is restricted to the use of certain types of firearms at certain times in a designated area only. The designated shooting range will be posted with official signs. Target practice, for the purpose of this rule, is defined as the discharge of a firearm for any reason other than the taking of, or the attempting to take, game or furbearing animals.

(1) Target shooting shall occur only on the designated and posted shooting range.

(2) Target shooting shall occur only between sunrise and sunset.

(3) No alcoholic beverages are allowed on the shooting range.

(4) Target shooting shall not be done with any fully automatic pistol, rifle or shotgun.

51.3(2) Reserved.

571—51.4(481A) Dogs prohibited—exception. Dogs shall be prohibited on all state-owned game management areas, as established under authority of Iowa Code section 481A.6, between the dates of March 15 and July 15 each year; except that, training of dogs shall be permitted on designated training areas. Field and retriever meets shall be conducted at designated sites. A permit as provided in Iowa Code section 481A.22 must be secured for field and retriever meets.

The permit shall show the exact designated site of said meet and all dogs shall be confined to that site.

571—51.5(481A) Use of blinds and decoys on game management areas.

51.5(1) *Stationary blinds.* The construction and use of stationary blinds on all game management areas are restricted as follows:

a. *Construction.* Any person may construct a stationary blind using only the natural vegetation found on the area. No trees or parts of trees other than willows may be cut for use in constructing a blind. No other man-made materials of any type may be used for building or providing access to a stationary blind.

b. *Use of blinds.* The use of any stationary blind which is constructed in violation of 51.5(1)*"a"* is prohibited.

c. *Ownership of blinds.* Any person who constructs or uses a stationary blind shall not have any proprietary right-of-ownership to the blind.

51.5(2) *Portable blinds.* The construction and use of portable blinds on game management areas shall be restricted as follows:

a. *Construction.* A portable blind may be constructed of any natural or man-made material, as long as it is a self-contained unit capable of being readily moved from one site to another.

b. *Prohibited use.* Portable blinds shall be prohibited from one-half hour after sunset until midnight each day. Portable blinds which are built on, or are part of, a boat shall be considered as removed from an area when the boat and blind are tied up or moored at an approved access site. No boat shall be anchored away from shore and left unattended unless it is attached to a legal buoy.

c. *Exception—tree blinds.* Portable blinds placed in trees and used for purposes other than hunting waterfowl may be left on an area for a continuous period of time beginning seven days prior to the open season for hunting deer or turkey and ending seven days after the final day of that open season. Portable blinds left on game management areas do not guarantee the owner exclusive use of the blind when unattended, or exclusive use of the site.

d. *Protection of trees.* The use of any spike, nail, pin, or other object which is driven or screwed into a tree is prohibited.

51.5(3) *Use of decoys.* The use of decoys on any game management area is restricted as follows:

Decoys are prohibited from one-half hour after sunset until midnight each day. Decoys shall be considered as removed from an area when they are picked up and placed in a boat, vehicle or other container at an approved access site.

571—51.6(481A) Trapping on game management areas.

51.6(1) *Marking trap sites.* No one shall place on any game management area any trap, stake, flag, marker, or any other item or device to be used for trapping furbearers, or to mark or otherwise claim any site for trapping furbearers, except during the open season for taking furbearers other than coyote.

51.6(2) Reserved.

571—51.7(481A) Motor vehicle restrictions. The use of motor vehicles on all game management areas is restricted.

51.7(1) *Roads and parking lots.* Except as otherwise provided in these rules, motor vehicles are prohibited on a game management area except on constructed and designated roads and parking lots.

51.7(2) *Handicapped persons.* Handicapped persons may use certain motor vehicles on game management areas, according to the restrictions set out in this rule, in order that they might enjoy such uses as are available to others.

a. *Definitions.* For purposes of this subrule, 51.7(2), the following definition shall apply: "Motor vehicle" means any self-propelled vehicle having at least three wheels and registered as a motor vehicle under Iowa Code chapter 321.

b. *Permits.* Each handicapped person must have a permit issued by the director in order to use motor vehicles on game management areas. Such permits will be issued without charge. Applicants must submit certificates from their doctors stating that the applicants meet the criteria describing handicapped persons. Nonhandicapped companions of permit holders are not covered under the conditions of the permit.

c. *Approved areas.* A permit holder must contact the technician or wildlife biologist of the specific area(s) that the permit holder wishes to use annually. The technician or wildlife biologist will determine which areas or portions of areas will not be open to use by permittees, in order to protect the permittee from hazards or to protect certain natural resources of the area. The technician or wildlife biologist will assist by arranging access to the area and by designated specific sites on the area where the motor vehicle may be used, and where it may not be used. The technician or wildlife biologist will provide a map of the area showing the sites where use is permitted and bearing the signature of the technician or wildlife biologist and the date.

d. *Exclusive use.* The issuance of a permit does not imply that the permittee has exclusive use of an area. Permittees shall take reasonable care so as not to unduly interfere with the use of the area by others.

e. *Prohibited acts.* Except as provided in subrule 51.7(1), the use of a motor vehicle on any game management area by a person without a valid permit, or at any site not approved on a signed map, is prohibited. Permits and maps must be carried by the permittee at any time the permittee is using a motor vehicle on a game management area, and must be exhibited to any department employee or law enforcement official upon request.

f. *Shooting from motor vehicle.* Except where prohibited by law, a handicapped person meeting the conditions of this rule may shoot from a stationary motor vehicle.

571—51.8(481A) Employees exempt. Restrictions in rules 51.3(481A) to 51.7(481A) shall not apply to department personnel, law enforcement officials, or other authorized persons engaged in research, management, or enforcement when in performance of their duties.

571—51.9(481A) Use of nontoxic shot on wildlife areas. It shall be unlawful to hunt any migratory game bird or resident game or furbearers, except deer and turkeys, or target shoot with a shotgun while having in one's possession any shot other than nontoxic shot approved by the U.S. Fish and Wildlife Service on the following wildlife areas:

County	Wildlife Area
Boone	Harrier Marsh
Buena Vista	All state and federal areas except Bluebird Access
Cerro Gordo	All state and federal areas
Clay	All state and federal areas except Burr Access, Dry Mud Lake, Little Sioux, Highbridge, Fen Valley, and the Ocheyedan wildlife area target shooting range
Dickinson	All state and federal areas except the Spring Run target shooting range
Emmet	All state and federal areas except Birge Lake, Grass Lake, Ryan Lake, and the East Des Moines River Access
Greene	All state and federal areas except Rippey Access and McMahon Access
Guthrie	McCord Pond, Lakin Slough and Bays Branch, except the target shooting range at Bays Branch
Hamilton	Little Wall Lake, Gordon Marsh and Bauer Slough
Hancock	All state and federal areas except Schuldt and Goodell
Humboldt	All state and federal areas except Bradgate Access and Willows Access
Kossuth	All state and federal areas except Seneca Access
Osceola	All state and federal areas
Palo Alto	All state and federal areas
Pocahontas	All state and federal areas except Kalsow Prairie
Polk	Paul Errington Marsh
Sac	All state and federal areas except White Horse Access and Sac City Access
Winnebago	All state and federal areas
Worth	All state and federal areas except Brights Lake
Wright	All state and federal areas except White Tail Flats

These rules are intended to implement Iowa Code sections 456A.24(2)*"a"* and 481A.6.

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Colyn Area ..... Lucas
Red Rock Area ..... Marion, Polk, Warren
Badger Lake ..... Monona
Tieville/Decatur Bend ..... Monona
Five Island Lake ..... Palo Alto
Big Creek-Saylorville Complex ..... Polk
Chichaqua Area ..... Polk
Cottonwood Area ..... Polk
I-35 Area ..... Polk
Smith Area ..... Pottawattamie
Lake View Area ..... Sac
Princeton Area ..... Scott
Prairie Rose Lake ..... Shelby
Otter Creek Marsh ..... Tama
Green Valley Lake ..... Union
Three Mile Lake ..... Union
Lake Sugema ..... Van Buren
Rice Lake Area ..... Winnebago
Snyder Lake ..... Woodbury
Elk Creek Marsh ..... Worth
Lake Cornelia ..... Wright

b. *Pool Slough Wildlife Area in Allamakee County.* Rescinded IAB 9/2/92, effective 10/7/92.

52.1(3) *Open water refuges.* Rescinded 6/17/98, effective 7/22/98.

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TITLE VII
FORESTRY

CHAPTER 71
NURSERY STOCK SALE TO THE PUBLIC

[Prior to 12/31/86, Conservation Commission[290] Ch 48]

571—71.1(456A,461A) Purpose. The department of natural resources shall sell nursery stock to private landowners and public agencies to encourage the establishment of wildlife habitat and erosion control plantings and to promote forestry.

571—71.2(456A,461A) Procedures.

71.2(1) *Description of nursery stock to be sold.*

a. Plants sold for use on private land shall not exceed four years of age.

b. Plants sold for use on private land shall be barerooted.

c. Only those species in accepted use for wildlife habitat, erosion control and forestry plantings shall be sold for use on private land.

d. Seeds and cuttings of those species in paragraph *"c"* may be sold for use on private land.

71.2(2) *Order limitations.*

a. The minimum acceptable order shall be 500 plants in total with the minimum number of 100 plants of one species.

(1) To complete the previous year's planting, a purchaser may order less than 500 plants with a minimum of 100 plants of one species.

(2) Special purpose packets shall contain the number and species of plants as determined annually by the state forester but not to exceed 400 plants.

b. If a shortage occurs, substitution of suitable species may be made at the discretion of the state forester.

c. Nursery stock shall be sold only for planting within the state of Iowa.

71.2(3) *Customer obligation.*

a. Nursery stock planted on private land shall be for the purpose of wildlife habitat establishment, the control of soil erosion or to establish forest cover.

b. Purchasers of nursery stock for planting on private land shall, as a part of the order, be required to certify the plants will be used for wildlife habitat, erosion control or forestation purposes and will not be used to establish a new farmstead windbreak, shade trees or ornamental plantings.

c. All purchasers of stock shall, as a part of the plant order, be required to certify as to the county in which the nursery stock will be planted.

d. All purchasers shall be required as a part of the plant order, to certify that the plants purchased will not be sold with roots attached.

571—71.3(456A,461A) Nursery stock prices.

71.3(1) Prices for hardwoods and shrubs shall be as follows:

a. Hardwoods and shrubs, 17" and larger—$40 per hundred plants.

b. Hardwoods and shrubs, 10" to 16"—$35 per hundred plants.

71.3(2) Prices for conifers shall be $20 per hundred plants.

71.3(3) Prices for wildlife packets shall be $65 each.

71.3(4) Prices for songbird packets shall be $20 each.

71.3(5) Prices for walnut seed shall be $3 per pound.

These rules are intended to implement Iowa Code sections 456A.20 and 461A.2 and 1989 Iowa Acts, chapter 311, section 16.

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CHAPTER 99
WILD TURKEY FALL HUNTING

571—99.1(481A) General. Wild turkey may be taken only by Iowa residents during the fall season subject to the following:

99.1(1) *License.* When hunting wild turkey, all hunters must have in possession a valid fall wild turkey hunting license and a valid hunting license and habitat stamp if normally required to have them. While hunting wild turkey, no person shall carry or have in possession a fall wild turkey hunting license or transportation tag issued to another person. Turkey hunting licenses will be issued by zone and period and will be valid only in the designated zone and for the designated period. Except as provided in 99.4(1), no person shall apply for or obtain more than one fall wild turkey combination shotgun-or-archery hunting license and one fall wild turkey archery-only hunting license.

99.1(2) *Seasons.* Wild turkey of any age or sex may be taken only during specified periods as follows:

a. *Combination shotgun-or-archery season.* The dates for the combination shotgun-or-archery season shall be from the Monday following the second Saturday in October through November 30 of the same year.

b. *Archery-only.* The dates for the fall archery-only wild turkey hunting season shall be the same as the dates for the archery deer season as defined in 571—Chapter 106.

99.1(3) *Daily possession and season limits.* The daily, season, and possession bag limit is one wild turkey per license.

99.1(4) *Shooting hours.*

a. *Combination shotgun-or-archery season.* Shooting hours shall be from one-half hour before sunrise to sunset each day.

b. *Archery-only season.* Shooting hours shall be from one-half hour before sunrise to one-half hour after sunset.

571—99.2(481A) Areas open to hunting. Wild turkey, according to the type of license issued, may be taken in specific areas only.

99.2(1) *Combination shotgun-or-archery season.* Wild turkey may be taken only in hunting zones described as follows:

a. *Zone 1.* Zone 1 is that portion of Stephens State Forest west of U.S. Highway 65 in Lucas and Clarke Counties.

b. *Zone 2.* Zone 2 is the Shimek State Forest in Lee and Van Buren Counties.

c. *Zone 3.* Zone 3 is that portion of the Yellow River State Forest in Allamakee County.

d. *Zone 4.* Zone 4 is that portion of Iowa bounded on the north by Interstate Highway 80 and on the west by U.S. Highway 59.

e. *Zone 5.* Zone 5 is that portion of Iowa bounded on the east by U.S. Highway 59 and on the north by U.S. Highway 20.

f. *Zone 6.* Zone 6 is that portion of Iowa bounded on the south by Interstate Highway 80 and on the west by U.S. Highway 63.

g. *Zone 7.* Zone 7 is that portion of Iowa bounded on the north by U.S. Highway 20, on the west by U.S. Highway 59, on the south by Interstate Highway 80 and on the east by U.S. Highway 63.

h. *Zone 8.* Zone 8 is that portion of Iowa bounded on the south by U.S. Highway 20, on the east by U.S. Highway 63, and on the west by U.S. Highway 69.

99.2(2) *Exceptions.* Licenses issued for Zone 1 and Zone 2 shall also be valid in Zone 4; licenses issued for Zone 3 shall also be valid in Zone 6.

99.2(3) *Archery-only season.* Wild turkey may be taken on an archery-only license statewide.

571—99.3(481A) Means and method of take.

99.3(1) *Permitted weapons.* In accordance with the type of license issued, wild turkey may be taken only with shotguns and muzzleloading shotguns not smaller than 20-gauge and shooting 4, 5, 6, 7½, or 8 shot only, or with recurve, compound or longbows with broadhead or blunt head arrows only (with a minimum diameter of 9/16 inch), except as otherwise provided in 571—15.5(483A). Arrows with chemical or explosive pods are not permitted.

99.3(2) *Prohibited devices.* The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord. "Bait" means grain, fruit, vegetables, nuts or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife.

571—99.4(481A) Application procedure. All applications for wild turkey fall hunting licenses must be made on forms provided by the department of natural resources and returned to the Department of Natural Resources, Des Moines, Iowa 50319-0035, with the proper license fee. Individual applications only will be accepted. Nonresidents may not apply for or obtain any fall wild turkey hunting license.

99.4(1) *Applications for combination shotgun-or-archery licenses.* Applications for paid combination shotgun-or-archery hunting licenses shall be received and accepted for 15 working days beginning the first Monday in July, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. No person shall submit more than one application. At the end of the period, if applications have been received in excess of the license quota for any hunting zone and license type, the department of natural resources shall conduct a drawing to determine which applicants shall receive licenses. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid applications for the drawing. If the quota for any hunting period, zone or license type has not been filled by applications received during the first application period, licenses shall then be issued in the order in which applications are received for 5 working days beginning the third Monday in August and shall continue to be issued until the quota has been met or until the end of the second application period, whichever occurs first. Residents who have obtained one combination shotgun-or-archery license may obtain one additional combination shotgun-or-archery license during the second application period if licenses are still available.

99.4(2) *Applications for archery-only licenses.* Applications for fall wild turkey archery-only hunting licenses will be received at any time beginning the first Monday in July. The number of archery-only licenses will not be restricted.

99.4(3) *Special turkey hunting licenses.* Applications for special wild turkey hunting licenses, as provided for in Iowa Code section 481A.38, subsection 3, shall be on forms furnished by the department and shall be received at the department offices from the first Monday in July to the end of the combination shotgun-or-archery second application period.

99.4(4) *Landowner-tenant licenses.* The application period for free landowner-tenant licenses shall be from the first Monday in July to the end of the combination shotgun-or-archery second application period. Free landowner-tenant shotgun-or-archery licenses are valid only for that portion of the farm unit that lies within a zone open for hunting as defined in 99.2(481A). Free landowner-tenant archery licenses are valid on farm units statewide. No landowner or tenant may obtain both a free combination shotgun-or-archery license and a paid combination shotgun-or-archery license, except that persons obtaining a free landowner or tenant license may obtain a paid license in the same manner that a nonlandowner or tenant obtains a second paid license, as provided in 99.4(1).

571—99.5(481A) License quotas. A limited number of wild turkey hunting licenses will be issued to residents in the zones as follows:

1. Zone 1. 50
2. Zone 2. 50
3. Zone 3. 50
4. Zone 4. 2,500
5. Zone 5. 300
6. Zone 6. 3,000
7. Zone 7. 200
8. Zone 8. 75

571—99.6(481A) Transportation tag. A transportation tag bearing license number of licensee, year of issuance and date of kill properly shown shall be visibly attached to the carcass of each wild turkey in such a manner that the tag cannot be removed without mutilating or destroying the tag before the carcass can be transported from the place of kill. The tag shall be proof of possession of the carcass by the licensee.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

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CHAPTER 106
DEER HUNTING
[Prior to 12/31/86, Conservation Commission[290] Ch 106]

571—106.1(481A) Licenses. Every hunter must have in possession a deer license valid for the current year when hunting, possessing, or transporting deer. No person while hunting deer shall carry or have in possession any license or transportation tag issued to another person.

106.1(1) *Bow season license.* Paid bow deer licenses shall be valid for taking any deer statewide or antlerless deer in the special antlerless zone and shall be valid only during the bow season. Only one paid bow license may be obtained from the county recorder's office. Individuals purchasing one bow license are eligible to purchase any gun license(s) available as provided in 571—Chapter 105 and 571—Chapter 106. This includes antlerless-only bow or gun permits in any county or special hunt area where additional licenses are available.

106.1(2) *Regular gun season license.* Paid regular gun season licenses will be valid for antlered deer, any sex deer or antlerless deer depending on the county or zone hunted. Licenses shall be valid statewide for the season designated on the license, except that antlerless licenses shall be valid only in one county in the special antlerless zone. Antlered deer are defined as those deer having at least one 7-inch antler.

Paid regular gun season licenses will be issued by season and will be valid for the designated season only.

106.1(3) *Muzzleloader season.* Paid muzzleloader season licenses shall be valid during one of the muzzleloader seasons for antlered deer, any sex deer, or antlerless deer depending on the county or zone hunted. Licenses will be valid statewide for the season designated on the license, except that antlerless licenses shall be valid only in one county in the special antlerless zone. Antlered deer are defined as those deer having at least one 7-inch antler.

106.1(4) *Special late season.* Paid special late season deer licenses will be valid only for antlerless deer during the special late season in one of the counties in the special antlerless zone.

571—106.2(481A) Season dates. Deer may be taken only during the following seasons:

106.2(1) *Bow season.* Deer may be taken by bow and arrow in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year, except special regulations in deer population management areas (571—Chapter 105).

106.2(2) *Regular gun seasons.* Deer may be taken with gun only in accordance with the type, tenure and zone from the first Saturday in December and continuing for five consecutive days or from the second Saturday in December and continuing for nine consecutive days.

106.2(3) *Muzzleloader seasons.* Deer may be taken by muzzleloader in accordance with the type, tenure and zone from the Saturday closest to October 14 and continuing for nine consecutive days or from the Monday following the third Saturday in December through January 10 of the following year.

106.2(4) *Special late season.* Antlerless deer may be taken by shotgun, muzzleloading rifle, handgun or bow as permitted in 571—106.7(481A) from January 11 through January 17. All participants must meet the hunter orange requirements in Iowa Code section 481A.122. All other regulations for taking deer with a firearm shall apply.

571—106.3(481A) Shooting hours. Legal shooting hours vary according to the type of season.

106.3(1) *Bow season.* Legal shooting hours for hunting deer with bow and arrow shall be one-half hour before sunrise to one-half hour after sunset each day.

106.3(2) *Regular gun season.* Legal shooting hours for hunting deer with a gun shall be sunrise to sunset each day.

106.3(3) *Muzzleloader seasons and special late season.* Legal shooting hours for hunting deer during the muzzleloader seasons and special late season shall be one-half hour before sunrise to one-half hour after sunset each day, regardless of weapon used.

571—106.4(481A) Limits.

106.4(1) *Bow season.* Daily bag limit one deer per license; possession limit one deer per license. A person may only shoot and tag a deer by utilizing the license and tag issued in the person's name.

106.4(2) *Muzzleloader season.* Daily bag limit one deer per license; possession limit one deer per license. A person may only shoot and tag a deer by utilizing the license and tag issued in the person's name.

106.4(3) *Regular gun seasons.* Bag limit shall be one deer for each hunter in the party who has a valid deer transportation tag. Possession limit shall be one deer per license; "possession" shall mean that the deer is in possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

106.4(4) *Special late season.* Daily bag and possession limit is one deer per license. Tagging requirements are the same as for the regular gun seasons.

106.4(5) *Maximum annual possession limit.* The maximum annual possession limit is one deer for each legal transportation tag obtained from the department of natural resources or county recorder.

571—106.5(481A) Areas open to hunting.

106.5(1) *Paid deer licenses.* Hunters shall be restricted to the type of deer they shoot based on the date and county or zone where they hunt.

a. *Bow season.* Deer of either sex may be taken in all counties.

b. *Early muzzleloader season and first regular gun season.* Any sex deer may be taken in all counties.

c. *Late muzzleloader season and second regular gun season.* Licenses will be valid for any sex deer in all counties.

106.5(2) *Paid antlerless deer licenses.* Paid antlerless deer licenses for the bow season, second regular gun season, late muzzleloader season and special late season shall be valid only for antlerless deer and only in the following counties (special antlerless zone): Adair, Montgomery, Page, Fremont, Adams, Taylor, Union, Ringgold, Clarke, Decatur, Lucas, Wayne, Monroe, Appanoose, Wapello, Davis, Jefferson, Van Buren, Henry, Lee and Washington.

106.5(3) *Free landowner/tenant licenses.* Free landowner/tenant licenses shall be valid for deer of either sex taken on the landowner/tenant's farm unit during the season designated on the license, except free regular gun season licenses shall be valid for both of the following periods: for five consecutive days beginning the first Saturday in December, and for nine consecutive days beginning the second Saturday in December.

106.5(4) *Closed areas.* There shall be no open season for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.

571—106.6(481A) License quotas. A limited number of deer licenses or a limited number of certain types of licenses will be issued as follows:

106.6(1) *Bow season.* An unlimited number of bow licenses will be issued from the county recorder's office. Persons that purchase a bow license may purchase up to two gun licenses as described in 106.6(2), or may purchase one gun license and one antlerless bow license valid only for the county or counties specified.

106.6(2) *Regular gun seasons.* Unlimited licenses for both first and second season will be available for all counties. Persons obtaining a paid license for the second regular gun season or late muzzleloader season shall be eligible to purchase a second antlerless-only license for the second regular gun season or late muzzleloader season that is valid for one of the counties designated in 106.5(2). Persons obtaining a paid license for the first regular gun season shall be eligible to purchase, if available, a second antlerless-only license for the late muzzleloader season that is valid for one of the counties designated in 106.5(2). No person obtaining a paid first season gun license is eligible to obtain a paid gun license for the second regular gun season.

106.6(3) *Muzzleloader seasons.*

a. *Early muzzleloader season.* No more than 7,500 licenses will be sold for the October early muzzleloader season. Hunters obtaining a paid early muzzleloader season license are not eligible to purchase any other gun season license.

b. *Late muzzleloader season.* An unlimited number of licenses will be issued for the December-January late muzzleloader season. Persons obtaining a paid late muzzleloader season license may obtain one additional second season or late muzzleloader gun license if available.

106.6(4) *Landowner/tenant free license and additional paid bow or gun license(s).* Anyone receiving a free landowner/tenant license may purchase any additional paid bow license and one or two gun licenses in accordance with rule 106.6(481A).

106.6(5) *Special antlerless-only licenses.* Antlerless-only permits will be available by county to all eligible individuals by drawing as follows:

Adams, 600; Appanoose, 800; Clarke, 500; Davis, 1,000; Decatur, 800; Fremont, 300; Jefferson, 500; Lucas, 300; Monroe, 700; Ringgold, 800; Taylor, 800; Union, 500; Van Buren, 1,100; Wapello, 500; Wayne, 300; Adair, 300; Page, 200; Montgomery, 300; Washington, 300; Henry, 300; and Lee, 300.

106.6(6) *Special late season.* Hunters may obtain special late season licenses subject to quotas for each county regardless of any other deer licenses they may have obtained.

571—106.7(481A) Method of take. Permitted weapons and devices vary according to the type of season.

106.7(1) *Bow season.* Except as provided in 571—15.5(481A), only recurve, compound or longbows with broadhead arrows will be permitted in taking deer during the bow season. Arrows with chemical or explosive pods are not permitted.

106.7(2) *Regular gun seasons.* Only 10-, 12-, 16- and 20-gauge shotguns, shooting single slugs only, flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, and handguns as described in 106.7(3) will be permitted in taking deer during the regular gun seasons.

106.7(3) *Muzzleloader seasons.* Only muzzleloading rifles will be permitted in taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloader, handgun or bow. "Muzzleloading rifles" are defined as flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only. Centerfire handguns must be .357 or larger shooting straight-walled cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in 1997 Iowa Acts, House File 142. Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns. Black powder handguns must be .44 caliber or larger, shooting single projectile only.

106.7(4) *Prohibited weapons and devices.* The use of dogs, domestic animals, bait, rifles other than muzzleloaded, handguns except as provided in 106.7(2) and 106.7(3), crossbows except as otherwise provided, automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetable, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to have on their person a rifle other than a muzzleloading rifle that meets the requirements of 106.7(3), or to have on their person a handgun during the bow and early muzzleloader seasons.

106.7(5) *Discharge of firearms from roadway.* No person shall discharge a shotgun shooting slugs or muzzleloader from a highway during the regular gun seasons in all counties and parts of counties north of Highway 30 and west of Highway 63. A "highway" means the way between property lines open to the public for vehicle traffic as defined in Iowa Code section 321.1(78).

571—106.8(481A) Application procedures.

106.8(1) *County recorder—issuance.* All free landowner/tenant deer licenses issued to qualifying landowners or tenants shall be issued by the county recorder's office in the county of residence. Regular shotgun and late muzzleloader season licenses shall be issued through the first Friday in November. Special late season licenses and bow licenses shall be issued through January 10. Additional paid deer licenses must be purchased through the department of natural resources.

106.8(2) *Regular gun, late muzzleloader season and antlerless licenses.* All applications for paid regular gun, late muzzleloader season, special late season and antlerless bow licenses shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. Applications for all statewide licenses and the first antlerless license must be accompanied by $25.50 for each license. Applications for all antlerless licenses after the first antlerless license must be accompanied by $10 for each license. Only individual applications will be accepted. Any incomplete or improperly completed application, any application not meeting the above conditions, or any application received after the application period will not be considered a valid application.

a. Statewide licenses. Applications will be received and accepted from the second Monday in July through the last Friday in August or if the application form bears a valid and legible U.S. Postal Service postmark prior to that date.

b. Antlerless licenses. Paid antlerless licenses will be issued by quota established for each county in the special antlerless zone. Applications will be received and accepted from the second Monday in July through the last Friday in August or if the application form bears a valid and legible U.S. Postal Service postmark prior to that date. Hunters may apply for one license for one of the following seasons: bow; second regular gun; or late muzzleloader. Hunters may apply for one additional license for the special late season. A drawing will be held for each county where the number of applications exceeds the quota. Applications will be accepted on a first-come, first-served basis after September 1 if any county quotas do not fill. Applications for the bow season or second regular gun season or late muzzleloader season will be accepted through the first Friday in November or until quotas fill. Applications for the special late season will be accepted through January 3, or until quotas fill. If licenses are still available after September 1, hunters may apply for one additional license for the bow season or second regular gun season or late muzzleloader season and one additional license for the special late season. The maximum number of antlerless licenses for an individual is four: two for the bow or second regular gun or late muzzleloader season and two for the special late season (if second licenses are available).

106.8(3) *Early muzzleloader season licenses.* All applications for early muzzleloader season licenses must be made on forms provided by the department of natural resources and returned to the department in Des Moines, Iowa. Applications must be accompanied by $25 for each license. Only individual applications will be accepted. Applications will be received and accepted from the second Monday in July through the second Friday in August. If valid applications exceed the quota, a drawing will be held. Any incomplete or improperly completed application, any application not meeting the above conditions, or any application received after the application period will not be considered as a valid application. If the quota for early muzzleloader season deer licenses has not been filled, licenses shall then be issued in the order in which applications are received and shall continue to be issued until quotas have been met or until the last Friday in August whichever first occurs.

106.8(4) *Alternate application methods.* The department may develop media/ telecommunication options that would allow for additional methods of obtaining a deer license. Methods and deadlines may be determined by the department as a part of the alternative methods developed.

106.8(5) *Restrictions.* No person shall apply for or purchase more than two deer bow licenses or one bow license and two firearms licenses except as provided in 571—Chapter 105 and rule 106.6(481A). No one purchasing an early muzzleloader deer license may purchase a second gun license. No one purchasing a first season gun license may purchase a second regular gun season license.

If a person provides false information in an application for any deer license, that license and transportation tag and any other deer hunting license and transportation tag applied for during the same year shall be invalid.

571—106.9(481A) Transportation tag. A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each deer, in such a manner that the tag cannot be removed without mutilating or destroying the tag, within 15 minutes of the time the deer is killed or before the carcass of the deer is moved in any manner, whichever first occurs. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to all deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility, or until the deer has been processed for consumption.

571—106.10(481A) Youth deer and severely disabled hunts.

106.10(1) *Licenses.*

a. Youth deer hunt. A special youth deer license will be issued to any Iowa resident that is 12 to 15 years of age by September 1 who possesses a valid hunter safety certificate. All persons participating must be accompanied by an adult possessing a regular hunting license and habitat stamp. Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm or bow and must be in direct company of the youth at all times. Persons may obtain only one youth deer license, but may also obtain one bow or firearm license for any other season. If the youth obtains a free landowner/tenant license, it will count as the one free license for which the youth's family is eligible.

b. Severely disabled hunt. Any Iowa resident meeting the requirements of Iowa Code section 321L.1(8) will be issued a severely disabled license. Persons applying for a severely disabled license must either possess a disabilities parking permit or provide a completed form from the department of natural resources and signed by a physician verifying their disability as defined in Iowa Code section 321L.1(8) along with a completed application. Those individuals between 16 and 65 years of age must also possess a regular hunting license and habitat stamp. Persons obtaining a license for the severely disabled hunt may obtain one additional bow license.

106.10(2) *Season dates.* Any sex deer may be taken statewide from the third Saturday in September through the first Sunday of October.

106.10(3) *Shooting hours.* Legal shooting hours for hunting deer will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

106.10(4) *Limits and license quotas.* Daily bag and possession limit is one deer per licensed person. The licensee can shoot only one deer during this season. An unlimited number of licenses will be issued.

106.10(5) *Method of take and other regulations.* Deer may be taken with shotgun, bow or muzzleloaded rifles as permitted in 571—106.7(481A). All participants must meet the hunter orange requirement in Iowa Code section 481A.122. All other regulations for taking deer with a gun shall apply.

106.10(6) *Application procedures.* All applications for youth gun and severely disabled deer hunting licenses for the current season shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. No one shall submit more than one application. Applications for youth gun and severely disabled deer hunting licenses must be accompanied by $25.50 for each license. Applications will be received and accepted only from the third Monday in June through the third Friday in July.

571—106.11(481A) Deer depredation management. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

106.11(1) *Method of take and other regulations.* Legal weapons and restrictions will be governed by 571—106.7(481A).

For deer shooting permits only, there are no shooting hour restrictions. The producer or designee must meet the deer hunters' orange apparel requirements in Iowa Code section 481A.122.

571—106.12(481A) Eligibility for free landowner/tenant deer licenses.

106.12(1) *Who qualifies for free deer hunting license.* Owners or tenants of a farm unit, or a member of an owner's or tenant's family that resides with the owner or tenant, are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

106.12(2) *Who qualifies as a tenant.* A "tenant" is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner's family, including the landowner's spouse or child in some circumstances, or a third party not a family member. The tenant does not have to reside on the farm unit.

106.12(3) *What "actively engaged in farming" means.* Landowners and tenants are "actively engaged in farming" if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or kind. A farm manager or other third party that operates a farm for a fee or a laborer that works on the farm for a wage and is not a family member does not qualify as a tenant.

106.12(4) *Landowners who qualify as active farmers.* These landowners:

a. Are the sole operator of a farm unit (along with immediate family members), or

b. Make all farm operations decisions, but contract for custom farming or hire labor to do some or all of the work, or

c. Participate annually in farm operations decisions such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or

d. Raise specialty crops such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or

e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

106.12(5) *Landowners who do not qualify.* These landowners:

a. Use a farm manager or other third party to operate the farm, or

b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

106.12(6) *Where free licenses are valid.* Free licenses are valid only on that portion of the farm unit that is in a zone open to deer hunting. A "farm unit" is all parcels of land that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. "Agricultural purposes" includes but is not limited to field crops, livestock, horticultural crops (e.g., nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

106.12(7) *How many free licenses may be obtained.* The maximum number of free licenses per farm unit is two, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner's family may obtain only one license. A tenant or the tenant's family is entitled to only one free license even if the tenant farms land for more than one landowner.

571—106.13(481A) Special late season deer hunt. Rescinded IAB 6/17/98, effective 7/22/98.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.24.

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CHAPTER 19
GENERAL ADMINISTRATION
[Prior to 11/5/86, Merit Employment Department [570]]

581—19.1(19A) State system of personnel. The state system of personnel administration is established by Iowa Code chapter 19A. The operational unit of the system is the department of personnel. Specific powers and duties of the department, its director, and the boards and commissions within the department are set forth in Iowa Code chapters 19A, 19B, 20, 79, 97A, 97B, 97C, and 509A.

19.1(1) Operational entities within the department are responsible for programs that include the development and administration of policies and procedures governing employee compensation (salaries and wages); benefit programs, including health, life, dental and disability insurance, unemployment and workers' compensation and deferred compensation and annuities; audit of payroll and other personnel transactions; professional personnel services to state departments; the communication of employment and personnel information to employees and supervisors throughout state government; the development and administration of policies and procedures concerning the recruitment, testing, and certification of personnel seeking employment or promotion; equal employment opportunity and affirmative action; and employee assistance, education, and training.

Responsibilities of the public employee retirement division include the development and administration of policies and procedures relative to the collection, disbursement, and investment of funds contributed to the retirement system by employers and employee members.

19.1(2) The director may establish other offices staffed by employees of the executive branch agencies in which they are employed to carry out the personnel management functions of the state personnel system. The functions performed and the services provided by these offices as well as the staff assigned to perform these functions are subject to policies set by the director.

19.1(3) The director has the statutory authority to designate an employee of the department to carry out the powers and duties of the director in the absence of, or the inability of the director to do so.

19.1(4) Information requests, materials submissions or inquiries concerning any operation or function of the department shall be addressed to the Director, Iowa Department of Personnel, Grimes State Office Building, East Fourteenth Street at Grand Avenue, Des Moines, Iowa 50319-0150. Telephone inquiry to the department may be made through listings provided in the City of Des Moines telephone directory or the Iowa Capitol Complex telephone directory.

19.1(5) The personnel commission is made up of five citizens who are appointed by the governor and confirmed by the senate to serve six-year terms. The chair is a member of the commission and elected by the commissioners. Meetings are open to the public and are held no less than quarterly at the call of the chair. Three members in attendance at a meeting constitute a quorum. Responsibilities of the commission are to:

a. Review, amend, and adopt administrative rules on matters within the scope of Iowa Code chapter 19A;

b. Approve additions to the classification plan;

c. Hold public hearings on pay plan changes;

d. Submit an annual report to the governor;

e. Represent the public interest in the improvement of personnel administration in the state merit system;

f. Consult with and advise the governor and the director on problems concerning personnel administration; and

g. Foster the interests of institutions of learning and of industrial, civic, professional, and employee organizations in the improvement of personnel standards in the state merit system.

581—19.2(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department, at Department of Personnel, Grimes Building, 400 East 14th Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF PERSONNEL

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

The petition must provide the following information:

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

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

581—19.3(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 19.7(17A) to whom notice is required by any provision of law. The department may also give notice to any other persons.

581—19.4(17A) Intervention.

19.4(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

19.4(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

19.4(3) A petition for intervention shall be filed at Department of Personnel, Grimes Building, 400 East 14th Street, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF PERSONNEL

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

The petition for intervention must provide the following information:

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

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

581—19.5(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

581—19.6(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the director of the department at Department of Personnel, Grimes Building, 400 East 14th Street, Des Moines, Iowa 50319.

581—19.7(17A) Service and filing of petitions and other papers.

19.7(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

19.7(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Department of Personnel, Grimes Building, 400 East 14th Street, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

19.7(3) *Method of service.* Petitions for declaratory orders, petitions for intervention, and every paper relating to such petitions shall be served upon the department and each known party simultaneously with their filing. The party filing a document is responsible for service on all parties.

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

19.7(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Director, Department of Personnel, Grimes Building, 400 East 14th Street, Des Moines, Iowa 50319, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

19.7(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

_____(Date) _____ (Signature)

581—19.8(17A) Informal meeting. The department may schedule a brief and informal meeting between the original petitioner, all intervenors, and the department, a member of the department, or a member of the staff of the department, to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

581—19.9(17A) Action on petition.

19.9(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

19.9(2) The date of issuance of an order or of a refusal to issue an order shall be the date of mailing of a decision or order, or date of delivery if service is by other means, unless another date is specified in the order.

581—19.10(17A) Refusal to issue order.

19.10(1) The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.

c. The department does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

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

j. The petitioner requests the department to determine whether any of the conditions under Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, section 24(10), have been met.

k. The department will not issue declaratory orders on the following:

(1) The present value of IPERS retirement monthly benefits;

(2) Actuarial assumptions used or proposed to be used by the department;

(3) The impact of proposed legislation;

(4) Issues which require the disclosure of confidential information; and

(5) Items listed in 581—26.1(17A).

19.10(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

19.10(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

581—19.11(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

581—19.12(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

581—19.13(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final agency action on the petition.

581—19.14(17A,19A) Petition for rule making.

19.14(1) *Filing.* Any person or agency may file a petition for rule making with the director. A petition is deemed filed when it is received in the department. The director shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides an extra copy for that purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE
DEPARTMENT OF PERSONNEL

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING

The petition must provide the following information:

a. A clear statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

b. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.

c. A brief summary of petitioner's arguments in support of the action urged in the petition.

d. A brief summary of any data supporting the action urged in the petition.

e. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

19.14(2) *Content.* The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and the petitioner's representative, and a statement indicating the person to whom communications concerning the petition shall be directed.

19.14(3) *Denial.* The director may deny a petition because it does not substantially conform to the required form.

19.14(4) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged. The director may request a brief from the petitioner or from any other person concerning the substance of the petition.

19.14(5) *Inquiries.* Inquiries concerning the status of a petition for rule making may be made to the director at the offices of the department.

19.14(6) *Consideration.*

a. The director may request the petitioner to submit additional information or argument concerning the petition. The director may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the director by any person.

b. Within 60 calendar days after the filing of the petition, or within any longer period agreed to by the petitioner, the director shall, in writing, deny the petition and notify the petitioner of that action and the specific grounds for the denial, or grant the petition and notify the petitioner that rule-making proceedings have begun.

The petitioner shall be deemed notified of the denial or granting of the petition on the date the notification is mailed.

c. Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the director's rejection of the petition.

581—19.15 Reserved.

581—19.16(19A) Drug use and drug tests.

19.16(1) *Policy.* Employees shall not report to work while under the influence of alcohol or illegal drugs. The unauthorized use, possession, sale, purchase, manufacture, distribution, or transfer of any illegal drug or alcoholic beverage while engaged in state business or on state property is prohibited. Employees who violate this policy are subject to disciplinary action up to and including discharge.

19.16(2) *Definition and applicability.*

a. "Drug test" means any blood, urine, saliva, chemical, or skin tissue test conducted for the purpose of detecting the presence of a chemical substance in an individual. These rules authorize only the use of urinalysis tests for this purpose. Other methods of drug testing are prohibited.

b. These rules do not apply to drug tests required under federal statutes, drug tests conducted pursuant to a nuclear regulatory commission policy statement, or drug tests conducted to determine if an employee is ineligible to receive workers' compensation under Iowa Code section 85.16, subsection 2.

19.16(3) *Preemployment drug tests.* A urinalysis drug test may be performed as part of a preemployment physical only for department of corrections correctional officer positions. Application materials for these positions shall include clear notice that a drug test is part of the preemployment physical. Requirements for these tests are as follows:

a. A urine sample will be collected during the preemployment physical examination.

b. The sample container will include identification for chain of custody purposes that does not include any part of the applicant's name or social security number.

c. The container will be transported directly from the site of the physical examination to a laboratory or other testing facility. Samples may be transported via certified mail or courier service.

d. The sample will be tested and retained by the laboratory or other testing facility for a minimum of 30 days. The applicant may have the sample analyzed, at the applicant's expense, by a laboratory or other testing facility approved in accordance with the administrative rules of the department of public health.

e. Each drug test will include an initial screen and a confirmation of positive results. The initial screening test may utilize immunoassay, thin layer, high performance liquid or gas chromatography, or an equivalent technology. If the initial test utilizes immunoassay, the test kit must meet the requirements of the Food and Drug Administration. All confirmation tests will be done by Gas Chromatography - Mass Spectrometry (GC-MS) at a laboratory or other testing facility approved in accordance with the administrative rules of the department of public health.

f. At a minimum, tests will screen for marijuana, cocaine, and amphetamines.

g. Procedures for obtaining, sealing, identifying, transporting, storing, and retention of samples shall protect the chain of custody and the viability of the sample, and shall comply with department of public health administrative rules.

h. The laboratory or other testing facility shall report the results of the drug tests to the appointing authority. The confidentiality of the information shall be protected by all parties.

i. The appointing authority shall provide an applicant an opportunity to rebut or explain the results of a positive drug test by administering a pretest questionnaire or arranging a posttest conference with the applicant.

j. A positive confirmation drug test will disqualify an applicant from further consideration and hire for department of corrections correctional officer positions.

19.16(4) *Employee drug tests.* Drug testing of employees is prohibited except as provided in subrule 19.5(2), paragraph *"b."*

These rules are intended to implement Iowa Code chapter 17A amended by 1998 Iowa Acts, chapter 1202.

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21.8(3) Refund of contributions—after reemployment.

a. *Less than six months.* A retired member who returns to permanent covered employment, but who resigns within six months of the date the reemployment began, is eligible to have the member contributions for this period refunded. The contributions made by the employer will be refunded to the employer.

b. *Six months or longer.* A retired member who returns to permanent employment and subsequently terminates the member's employment may elect to receive an increased monthly allowance, or a refund of the member's and, effective July 1, 1998, employer's accumulated contributions accrued during the period of reemployment. A reemployed member who elects a refund under this subrule in lieu of an increased monthly allowance shall forfeit all other rights to benefits under the system with respect to the period of reemployment. If IPERS determines that the reemployment will not increase the amount of a member's monthly benefit, a member can only elect the refund.

21.8(4) Refunds of any kind shall not be issued if the amount due is less than $1.

This rule is intended to implement Iowa Code sections 97B.10, 97B.46 and 97B.53.

581—21.9(97B) Appeals.

21.9(1) *Procedures.*

a. A party who wishes to appeal a decision by IPERS other than a special service classification shall, within 30 days after notification was mailed to the party's last-known address, file with IPERS a notice of appeal in writing setting forth:

(1) The name, address, and social security number of the applicant;

(2) A reference to the decision from which the appeal is being made;

(3) The fact that an appeal from the decision is being made; and

(4) The grounds upon which the appeal is based.

Upon receipt of the appeal, IPERS shall conduct an internal review of the facts and circumstances involved, in accordance with its appeal review procedure. IPERS shall issue a final agency decision which becomes final unless within 30 days of issuance the member files a notice of further appeal. Upon receipt of notification of further appeal, IPERS shall inform the department of inspections and appeals of the filing of the appeal and of relevant information pertaining to the case in question. In determining the date that an appeal or any other document is filed with IPERS or the department of inspections and appeals, the following shall apply: An appeal or any other document delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt. The department of inspections and appeals shall hold a hearing on the case and shall affirm, modify, or reverse the decision by IPERS.

b. Members shall file appeals of their special service classifications with their respective employers, using the appeal procedures of such employers. The appeal procedures for department of corrections employees shall be specified in rules adopted by the personnel division of the Iowa department of personnel. IPERS shall have no jurisdiction over special service classification appeals.

21.9(2) *The determination of appeals.* Following the conclusion of a hearing of an appeal, the administrative law judge within the department of inspections and appeals shall announce the findings of fact. The decision shall be in writing, signed by the administrative law judge, and filed with IPERS, with a copy mailed to the appellant. Such decision shall be deemed final unless, within 30 days after the issuance date of such decision, further appeal is initiated. The issuance date is the date that the decision is signed by the administrative law judge.

21.9(3) *Appeal board.* A party appealing from a decision of an administrative law judge shall file a notice with the employment appeal board of the Iowa department of inspections and appeals, petitioning the appeal board for review of the administrative law judge's decision. In determining the date that a notice of appeal or any other document is filed with the employment appeal board, and subject to applicable exceptions adopted by the employment appeal board in IAC [486], the following shall apply: an appeal or any other document delivered by mail shall be deemed to be filed as of the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed as of the date that it is received.

21.9(4) *Judicial review.* The appeal board's decision shall be final and without further review 30 days after the decision is mailed to all interested parties of record unless within 20 days a petition for rehearing is filed with the appeal board or within 30 days a petition for judicial review is filed in the appropriate district court. The department, in its discretion, may also petition the district court for judicial review of questions of law involving any of its decisions. Action brought by the department for judicial review of its decisions shall be brought in the district court of Polk County, Iowa.

21.9(5) *Contested case procedure.* Appeals of decisions by IPERS that are heard by the department of inspections and appeals shall be conducted pursuant to the rules governing contested case hearings adopted by the department of inspections and appeals under 481—Chapter 10.

This rule is intended to implement Iowa Code sections 97B.16, 97B.20, 97B.20A, 97B.20B, 97B.27 and 97B.29.

581—21.10(97B) Beneficiaries.

21.10(1) Designation of beneficiaries. To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. The designation of a beneficiary by a retiring member on the application for monthly benefits is accepted by IPERS in lieu of a completed designation form. IPERS may consider as valid a designation of beneficiary form filed with the member's employer prior to the death of the member, even if that form was not forwarded to IPERS prior to the member's death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 retiree may name someone other than the member's contingent annuitant as beneficiary, but only for death benefits accrued during the period of reemployment and only if the contingent annuitant has died or has been divorced from the member. If a reemployed IPERS Option 4 retiree dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the death benefits awarded in a qualified domestic relations order (QDRO) shall be paid to the contingent annuitant as alternate payee, and the remainder of the death benefits shall be paid to the member's estate, or the member's heirs if no estate is probated.

21.10(2) Change of beneficiary. The beneficiary may be changed by the member by filing a new designation of beneficiary form with IPERS. The latest dated designation of beneficiary form on file shall determine the identity of the beneficiary. Payment of a refund to a terminated member cancels the designation of beneficiary on file with IPERS.

21.10(3) Payments to a beneficiary. Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member's death certificate, together with information establishing the claimant's right to payment. A named beneficiary must complete IPERS' application for death benefits based on the deceased member's account.

21.10(4) Where the designated beneficiary is an estate, trust, church, charity or other like organization, payment of benefits shall be made in a lump sum only.

21.10(5) Rescinded IAB 7/5/95, effective 8/9/95.

The portion of the favorable actuarial experience, if any, that is not initially credited to the reserve account using the foregoing table, but which, if applied to the retirement fund, would result in the actuarial valuation of assets exceeding the actuarial accrued liability of the system based on the most recent annual actuarial valuation of the system, shall be credited to the reserve account.

21.30(2) *Determination of applicable percentage.* The department shall have sole discretion to determine the applicable percentages that will be used in calculating favorable experience dividends payable under this rule, if any, subject to the actuary's certification that the resulting favorable experience dividends meet the requirements of Iowa Code section 97B.49F(2) and this rule.

a. The department's annual applicable percentage target for calculating dividends under Iowa Code section 97B.49F(2) shall be equal to the applicable percentage used in calculating dividends payable to retirees under Iowa Code section 97B.49F(1). Notwithstanding the foregoing, the department may set a greater or lesser applicable percentage for calculating dividends under this rule depending on the funding adequacy of the reserve account. In no event shall the applicable percentage exceed 3 percent.

b. In determining the annual applicable percentage, the department shall consider, but not be limited to, the value of the reserve account, distributions made from the reserve account in previous years, and the likelihood of future credits to and distributions from the reserve account. The department shall make its annual applicable percentage decisions using at least a rolling five-year period.

c. If for any year the department cannot afford an applicable percentage equal to that payable to retirees under Iowa Code section 97B.49F(1), the department may use applicable percentages in succeeding years that are higher than those used in calculating dividends for retirees under Iowa Code section 97B.49F(1) (but not in excess of 3 percent).

d. An applicable percentage in excess of the applicable percentage declared under Iowa Code section 97B.49F(1) made for catch-up purposes shall not reduce the funding of the reserve account below the amount the system's actuary determines is necessary to pay the maximum favorable experience dividend for each of the next five years, based on reasonable actuarial assumptions.

21.30(3) *Calculation of FED for individual members and beneficiaries.* A member must be retired for one full year to qualify for a favorable experience dividend. In determining whether a member has been retired one full year, the department shall count the member's first month of entitlement as the first month of the one-year period. The month in which the favorable experience dividend is payable shall be included in determining whether a member meets the eligibility requirements.

An eligible member's favorable experience dividend shall be calculated by multiplying the total monthly benefit payments received in the prior calendar year by the number of complete years the member has been retired or would have been retired if living on the date the dividend is payable, and by the applicable percentage set by the department. The number of complete years the member has been retired shall be determined by rounding down to the nearest whole year.

This rule is intended to implement Iowa Code section 97B.49F(2).

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CHAPTER 26
CONTESTED CASES

581—26.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the department. Excepted from this chapter are matters covered by rules 581—11.2(19A) and 581—12.1(19A), 581—subrule 12.2(6), and rules 581—20.6(19B) and 581—21.9(97B); matters covered by the grievance procedure in any collective bargaining agreement with state employees; matters within the exclusive jurisdiction of the industrial commissioner; and matters related to the department's vendors who administer group benefits if the vendor has an established complaint or appeal procedure.

581—26.2(17A) Definitions. Except where otherwise specifically defined by law:

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

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

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

"Presiding officer" means the department director, department director's designee, or in the case of an appeal pursuant to rule 581—3.5(19A) the classification appeal committee appointed by the director.

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

581—26.3(17A) Time requirements.

26.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

26.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule that specifies a jurisdictional filing deadline. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

581—26.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

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

581—26.5(17A) Notice of hearing.

26.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

b. Certified mail, return receipt requested; or

c. First-class mail; or

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

26.5(2) *Contents.* The notice of hearing shall contain the following information:

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

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

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

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

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

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

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

h. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 26.6(17A) that the presiding officer be an administrative law judge.

581—26.6(17A) Presiding officer.

26.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request to the director within 14 days after service of a notice of hearing which identifies or describes the presiding officer as the director, or director's designee if the designee is also a member of the department.

26.6(2) The director, or the director's designee, may deny the request only upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

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

c. An administrative law judge with the qualifications identified in 26.6(4) is unavailable to hear the case within a reasonable time.

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

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

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

g. The request was not timely filed.

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

26.6(3) The director, or the director's designee, shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in 26.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

26.6(4) An administrative law judge assigned to act as presiding officer during classification appeal hearings under 581—3.5(19A) shall have the following technical expertness unless waived by the department:

a. A license to practice law in the state of Iowa;

b. Three years' experience as an administrative law judge;

c. Three years' experience involving the state's classification system, or similar classification system of a large public employer, including examining positions for making determinations of the correct classification.

26.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

26.6(6) Unless otherwise provided by law, the director, or the director's designee, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

581—26.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the department in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

581—26.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

581—26.9(17A) Disqualification.

26.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

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

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

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

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

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

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

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

26.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 26.9(3) and 26.23(9).

26.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

26.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 26.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 26.25(17A) and seek a stay under rule 26.29(17A).

581—26.10(17A) Consolidation—severance.

26.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

26.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

581—26.11(17A) Pleadings.

26.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

26.11(2) Petition.

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

b. A petition shall state in separately numbered paragraphs the following:

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

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

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

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

26.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

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

26.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

581—26.12(17A) Service and filing of pleadings and other papers.

26.12(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

26.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

26.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Director, Department of Personnel, Grimes Building, 400 East 14th Street, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the department.

26.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Director, Department of Personnel, 400 East 14th Street, Des Moines, Iowa 50319, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

26.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> _____(Date) _____(Signature)

581—26.13(17A) Discovery.

26.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

26.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 26.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

26.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

581—26.14(17A) Subpoenas.

26.14(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least five days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

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

26.14(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

581—26.15(17A) Motions.

26.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

26.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

26.15(3) The presiding officer may schedule oral argument on any motion.

26.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days, or other time period designated by the department or presiding officer, prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the department or an order of the presiding officer.

26.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or normal submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 26.28(17A) and appeal pursuant to 26.27(17A).

581—26.16(17A) Prehearing conference.

26.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

26.16(2) Each party shall bring to the prehearing conference:

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

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

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

26.16(3) In addition to the requirements of subrule 26.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

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

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

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

26.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

581—26.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

26.17(1) A written application for a continuance shall:

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

b. State the specific reasons for the request; and

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

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

26.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

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

h. The timeliness of the request; and

i. Other relevant factors.

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

581—26.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with department rules. A party requesting withdrawal of an appeal shall do so in writing and submit the request to the director or presiding officer, whichever is applicable. Unless otherwise provided, a withdrawal shall be with prejudice.

581—26.19(17A) Intervention.

26.19(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

26.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. The presiding officer may deny the motion for leave to intervene if not filed timely. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

26.19(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

26.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

581—26.20(17A) Hearing procedures.

26.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

26.20(2) All objections shall be timely made and stated on the record.

26.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law. The cost of representation is the responsibility of the party.

26.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

26.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

26.20(6) Witnesses may be sequestered during the hearing.

26.20(7) The presiding officer shall conduct the hearing in the following manner:

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

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

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

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

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

581—26.21(17A) Evidence.

26.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

26.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

26.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

26.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

26.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

26.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

581—26.22(17A) Default.

26.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

26.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

26.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 26.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

26.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

26.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

26.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

26.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 26.25(17A).

26.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

26.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

26.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 26.29(17A).

581—26.23(17A) Ex parte communication.

26.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 26.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

26.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

26.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

26.23(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 26.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

26.23(5) Persons who jointly act as presiding officer or are a committee assigned to conduct a contested case may communicate with each other without notice or opportunity for parties to participate.

26.23(6) The director, director's designee, or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 26.23(1).

26.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 26.17(17A).

26.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication while a contested case is pending must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record and disclosed to all parties having an interest in the contested case. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

26.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

26.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by department personnel shall be reported to director or department general counsel for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

581—26.24(17A) Recording costs. Upon request, the department shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

581—26.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the director or the director's designee may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which the granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within ten days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

581—26.26(17A) Final decision.

26.26(1) When the department presides over the reception of evidence at the hearing, its decision is a final decision.

26.26(2) When the department does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 26.27(17A).

581—26.27(17A) Appeals and review.

26.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the director within 14 days after issuance of the proposed decision.

26.27(2) *Review.* The director may initiate review of a proposed decision on the director's own motion at any time within 21 days following the issuance of such a decision.

26.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

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

d. The relief sought;

e. The grounds for relief.

26.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The director may remand a case to the presiding officer for further hearing. The director, or a designee of the director, may preside at the taking of additional evidence.

26.27(5) *Scheduling.* The department shall issue a schedule for consideration of the appeal.

26.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 14 days thereafter any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The director or director's designee may resolve the appeal on the briefs or provide an opportunity for oral argument. The director or director's designee may shorten or extend the briefing period as appropriate.

581—26.28(17A) Applications for rehearing.

26.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

26.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 26.27(4), the applicant requests an opportunity to submit additional evidence.

26.28(3) *Time of filing.* The application shall be filed with the department within 20 days after issuance of the final decision.

26.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the department shall serve copies on all parties.

26.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the department grants the application within 20 days after its filing.

581—26.29(17A) Stays of agency actions.

26.29(1) *When available.*

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

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

26.29(2) *When granted.* In determining whether to grant a stay, the director, director's designee, or presiding officer shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

26.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the department's representative or any other party.

581—26.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

581—26.31(17A) Emergency adjudicative proceedings.

26.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

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

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

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

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

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

26.31(2) *Issuance of order.*

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

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

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

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

26.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

26.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTERS 27 to 30
Reserved

CHAPTER 31
DEPARTMENT PROCEDURE FOR RULE MAKING

581—31.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter. Except as otherwise provided by statute or rule, all communications to the department regarding the adoption, amendment or repeal of a rule must be addressed as follows:

31.1(1) For all matters except those relating to the Iowa public employees' retirement system: General Counsel, Iowa Department of Personnel, Grimes Building, 400 East 14th Street, Des Moines, Iowa 50319.

31.1(2) For matters relating to the Iowa public employees' retirement system: General Counsel, Iowa Public Employees' Retirement System, 600 East Court Avenue, Des Moines, Iowa 50309.

581—31.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public by any reasonable means on a subject matter of possible rule making by the department. Notwithstanding the foregoing, except as otherwise provided by law, the department may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

581—31.3(17A) Public participation.

31.3(1) *Written comments.* For at least 20 days after publication of a Notice of Intended Action, persons may submit argument, data, and views, in writing, on the subject matter of the Notice of Intended Action. Such written submissions should identify each proposed rule to which they relate and should be submitted to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action.

31.3(2) *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a Notice of Intended Action. The department shall schedule an oral proceeding if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

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

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

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

31.3(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, section 8, or subrule 31.3(2) of this chapter.

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

c. Presiding officer. The department, a member of the department, or another person designated by the department who will be familiar with the substance of the rules proposed in the Notice of Intended Action, shall preside at the oral proceeding. If the department does not preside, the presiding officer shall prepare a memorandum for consideration by the department summarizing the contents of the presentations made at the oral proceeding unless the department determines that such a memorandum is unnecessary because the department will personally listen to or read the entire transcript of the oral proceeding.

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

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

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

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

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

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

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

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

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

31.3(4) *Additional information.* In addition to receiving written comments and oral presentations according to the provisions of this rule, the department may obtain information concerning its proposed rules through any other lawful means deemed appropriate under the circumstances.

31.3(5) *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance to arrange access or other needed services.

581—31.4(17A,25B) Fiscal impact statement.

31.4(1) A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

31.4(2) If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

581—31.5(17A) Variance between adopted rule and published notice of proposed rule adoption.

31.5(1) The department shall not adopt a rule that differs from the rule proposed in a Notice of Intended Action on which the rule is based unless:

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

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

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

31.5(2) In determining whether a Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the department shall consider the following factors:

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

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

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

31.5(3) The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of an adopted rule that differs from the proposed rule contained in the Notice of Intended Action upon which the adopted rule is based, unless the department finds that the differences are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

581—31.6(17A) Exemptions from public rule-making procedures.

31.6(1) *Omission of notice and comment.* To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule or set of rules, the department may adopt that rule or set of rules without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

31.6(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each category:

a. Rules that implement nondiscretionary federal law;

b. Rules that implement nondiscretionary state law;

c. Rules implementing contribution rates set by the Iowa public employees' retirement system's actuary;

d. Minor changes such as grammar, punctuation, spelling and other scrivener's errors that are otherwise nonsubstantive and serve only to make a correction; and

e. Any other categories added to this list by rule making where such an exemption is justified.

31.6(3) *Public proceedings on rules adopted without them.* The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule adopted in reliance upon subrule 31.6(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 31.6(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. A rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt a rule it adopted without benefit of all usual procedures on the basis of subrule 31.6(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

581—31.7(17A) Concise statement of reasons.

31.7(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

31.7(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the particular rule;

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

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

31.7(3) *Time of issuance.* After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

581—31.8(17A) Contents, style, and form of rules.

31.8(1) *Contents.* Each rule making by the department shall contain the text of each rule and, in addition:

a. The date the department adopted the rule;

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

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

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

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

f. Effective July 1, 1999, if the department has not included the subject matter of the proposed rule in a separate rule listing categories of rules for which no waiver provision will be included, a brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waivers or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include such reasons; and

g. The effective date of the rule.

31.8(2) *Incorporation by reference.* The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated material in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated material by location, title, citation, date, and edition, if any, and may state that the proposed or adopted rule includes any later amendments or editions of the proposed material that are binding on the department by state or federal law or regulation. The department may only incorporate such material by reference in a proposed or adopted rule if it is readily available to the public at the department's principal place of business, or at the state law library. If the department adopts standards by reference to another publication that is not available to the public at the department's principal place of business and is not currently on file with the state law library, the department shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library. The department shall retain permanently a copy of any materials not available from the state law library that are incorporated by reference in a rule. Copies of incorporated material not available from the state law library may be obtained at cost from the department. The department shall also provide upon request information about how and where copies of the incorporated matter may be obtained directly from the issuer of the incorporated material.

31.8(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department will provide a copy of that full text at actual cost upon request and shall ensure that copies of the full text are available for review at the state law library and may make the standards available electronically.

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

31.8(4) *Style and form.* In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

581—31.9(17A) Department rule-making record.

31.9(1) *Requirement.* The department shall maintain for each separate rule making an index listing and summarizing the rules being proposed, adopted, amended or repealed. In addition, the department shall maintain a rule-making record as described in subrule 31.9(2) for each separate rule making that it proposes, adopts, or terminates under the provisions of Iowa Code chapter 17A and this chapter. These indices and rule-making records, including materials incorporated by reference, must be available for public inspection.

31.9(2) *Contents of rule-making record.* The department shall maintain a file containing the indices from each separate rule making that it proposes, adopts, or terminates under the provisions of Iowa Code chapter 17A and this chapter. This file shall also include information showing the date of publication in the Iowa Administrative Bulletin and ARC number where each applicable rule making was published.

Each separate rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to a rule making and any file-stamped copies of department submissions to the administrative rules coordinator concerning the rule making;

b. All written petitions for declaratory orders, all requests for rule makings, all submissions by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the department and considered in connection with the formulation, proposal, or adoption of a rule or the proceeding upon which a rule is based, except to the extent the department is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the department shall identify in the record the particular materials deleted and state the reasons for that deletion;

c. Any official transcript of oral presentations made in rule-making proceedings or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

d. A copy of any regulatory analysis or fiscal impact statement prepared for rule-making proceedings;

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

f. All petitions for amendment, repeal or suspension of the rule;

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

h. A copy of any objection to a rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any department response to such objections;

i. A copy of any significant criticism of the rule, including a summary of any petitions for waiver of a rule; and

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

31.9(3) *Effect of record.* Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on a rule.

31.9(4) *Maintenance of record.* The department shall maintain the rule-making record for a period of not less than five years from the latest date the rules to which it pertains became effective, or the date of the Notice of Intended Action, whichever is later.

581—31.10(17A) Effectiveness of rules prior to publication.

31.10(1) *Grounds.* The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

31.10(2) *Special notice.* When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule 31.10(2).

581—31.11(17A) Review by department of rules.

31.11(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

31.11(2) In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the department's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 203
STANDARDS FOR CERTIFICATE OF NEED REVIEW

CHAPTER 204
UNIFORM REPORTING REQUIREMENTS

136.3(4) Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

136.3(5) Notice of denial, citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, citation and warning, probation, suspension, or revocation shall be served by certified mail, return receipt requested, or by personal service.

136.3(6) Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is: Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

136.3(7) Upon receipt of a request for hearing, the request shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

136.3(8) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

136.3(9) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

136.3(10) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

136.3(11) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings on them.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

136.3(12) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or personal service.

136.3(13) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

136.3(14) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is:

Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

136.3(15) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

136.3(16) Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, news media or employer.

These rules are intended to implement Iowa Code section 147A.26.

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CHAPTER 137
TRAUMA EDUCATION AND TRAINING

641—137.1(147A) Definitions. For the purpose of these rules, the following definitions shall apply:

"ACLS course" means advanced cardiac life support course.

"Advanced registered nurse practitioner (ARNP)" means a nurse pursuant to 655—7.1(152) with current licensure as a registered nurse in Iowa who is registered in Iowa to practice in an advanced role. The ARNP is prepared for an advanced role by virtue of additional knowledge and skills gained through a formal advanced practice education program of nursing in a specialty area approved by the board. In the advanced role, the nurse practices nursing assessment, intervention, and management within the boundaries of the nurse-client relationship. Advanced nursing practice occurs in a variety of settings within an interdisciplinary health care team, which provide for consultation, collaborative management, or referral. The ARNP may perform selected medically delegated functions when a collaborative practice agreement exists.

"Advanced trauma life support course" means a course for physicians with an emphasis on the first hour of initial assessment and primary management of the injured patient, starting at the point in time of injury continuing through initial assessment, life-saving intervention, reevaluation, stabilization, and transfer when appropriate.

"ARNP" means advanced registered nurse practitioner.

"ATLS" means advanced trauma life support.

"Department" means the Iowa department of public health.

"Director" means the director of the Iowa department of public health.

"Emergency care facility" means a physician's office, clinic, or other health care center which provides emergency medical care in conjunction with other primary care services.

"Emergency medical care provider" means an individual trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic level or other certification levels adopted by rule by the department who has been issued a certificate by the department.

"EMS" means emergency medical services.

"EMT" means emergency medical technician.

"EMT-A" means emergency medical technician ambulance.

"EMT-B" means emergency medical technician basic.

"EMT-D" means emergency medical technician defibrillation.

"EMT-I" means emergency medical technician intermediate.

"EMT-P" means emergency medical technician paramedic.

"FR" means first responder.

"FR-D" means first responder defibrillation.

"Hospital" means a facility licensed under Iowa Code chapter 135B, or comparable emergency care facility located and licensed in another state.

"Licensed practical nurse" means an individual licensed pursuant to Iowa Code chapter 152.

"LPN" means licensed practical nurse.

"NRP course" means neonatal resuscitation provider course.

"PA" means physician assistant.

"PALS course" means pediatric advanced life support course.

"Physician" means an individual licensed under Iowa Code chapter 148, 150 or 150A.

"Physician assistant" means an individual licensed pursuant to Iowa Code chapter 148C.

"Practitioner" means a person who practices medicine or one of the associated health care professions.

"Registered nurse" means an individual licensed pursuant to Iowa Code chapter 152.

"RN" means registered nurse.

"SEQIC" means system evaluation quality improvement committee.

"Service program" means any 24-hour emergency medical care ambulance service or nontransport service program that has received authorization by the department.

"System evaluation quality improvement committee" means the committee established by the department pursuant to Iowa Code section 147A.25 to develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement.

"Trauma" means a single or multisystem life-threatening or limb-threatening injury, or an injury requiring immediate medical or surgical intervention or treatment to prevent death or disability.

"Trauma care facility" means a hospital or emergency care facility which provides trauma care and has been verified by the department as having Level I, II, III, or IV care capabilities and has been issued a certificate of verification pursuant to Iowa Code section 147A.23, subsection 2, paragraph "c."

"Trauma care system" means an organized approach to providing personnel, facilities, and equipment for effective and coordinated trauma care.

"Trauma nursing course objectives" means the trauma nursing course objectives recommended to the department by the trauma system advisory council and adopted by reference in these rules.

"Trauma patient" means a victim of an external cause of injury that results in major or minor tissue damage or destruction caused by intentional or unintentional exposure to thermal, mechanical, electrical or chemical energy, or by the absence of heat or oxygen (ICD9 Codes E800.0 - E999.9).

"Trauma system advisory council" means the council established by the department pursuant to Iowa Code section 147A.24 to advise the department on issues and strategies to achieve optimal trauma care delivery throughout the state, to assist the department in the implementation of an Iowa trauma care plan, to develop criteria for the categorization of all hospitals and emergency care facilities according to their trauma care capabilities, to develop a process for verification of the trauma care capacity of each facility and the issuance of a certificate of verification, to develop standards for medical direction, trauma care, triage and transfer protocols, and trauma registries, to promote public information and education activities for injury prevention, and to review rules adopted under this division, and to make recommendations to the director for changes to further promote optimal trauma care.

"Trauma team" means a team of multidisciplinary health care providers established and defined by a hospital or emergency care facility that provides trauma care commensurate with the level of trauma care facility verification.

"TSAC" means trauma system advisory council.

"Verification" means a process by which the department certifies a hospital or emergency care facility's capacity to provide trauma care in accordance with criteria established for Level I, II, III, and IV trauma care facilities and these rules.

641—137.2(147A) Initial trauma education for Iowa's trauma system. Initial trauma education (Table 1) is required of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

Table 1

Practitioner	Resource (Level I) TCF	Regional (Level II) TCF	Area (Level III) TCF	Community (Level IV) TCF
Physician PA/ARNP	1. ATLS 2. Trauma System Overview	1. ATLS 2. Trauma System Overview	1. ATLS 2. Trauma System Overview	1. ATLS 2. Trauma System Overview
RN/LPN	1. Successful completion of trauma nursing course objectives recommended by TSAC 2. Trauma System Overview	1. Successful completion of trauma nursing course objectives recommended by TSAC 2. Trauma System Overview	1. Successful completion of trauma nursing course objectives recommended by TSAC 2. Trauma System Overview	1. Successful completion of trauma nursing course objectives recommended by TSAC 2. Trauma System Overview

137.2(1) General requirements for initial trauma education.

a. Completion of initial trauma education shall be done within three years of the trauma care facility's initial verification or within one year of the practitioner's joining the trauma care facility's trauma team.

b. Trauma nursing course objectives (1998) are incorporated and adopted by reference for all trauma care facilities. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

c. Trauma nursing course objectives are available from the Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

137.2(2) Initial trauma education (Table 2) is required prior to January 1, 2001, of emergency medical care providers involved in the initial resuscitation of the injured patient while participating on an authorized transporting service program.

Table 2

Emergency Medical Care Provider	Initial Trauma Education
FR or FR-D EMT-A, B, or D EMT-I EMT-P	1. Overview of Iowa's trauma system. 2. Glasgow coma scale. 3. Out-of-hospital trauma triage destination decision protocol.

641—137.3(147A) Continuing trauma education for Iowa's trauma system. Continuing trauma education (Table 3) is required every four years of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

Table 3

Practitioner	Resource (Level I) TCF	Regional (Level II) TCF	Area (Level III) TCF	Community (Level IV) TCF
Physician PA/ARNP	24 hours of continuing trauma education: 8 hours formal (recommend ATLS refresher course), 16 hours informal.	24 hours of continuing trauma education: 8 hours formal (recommend ATLS refresher course), 16 hours informal.	24 hours of continuing trauma education: 8 hours formal (ATLS refresher course required), 16 hours informal.	24 hours of continuing trauma education: 8 hours formal (ATLS refresher course required), 16 hours informal.
RN/LPN	16 hours of continuing trauma education: 4 hours formal (refresher course in trauma nursing course objectives recommended by TSAC is required), 12 hours informal.	16 hours of continuing trauma education: 4 hours formal (refresher course in trauma nursing course objectives recommended by TSAC is required), 12 hours informal.	16 hours of continuing trauma education: 4 hours formal (refresher course in trauma nursing course objectives recommended by TSAC is required), 12 hours informal.	16 hours of continuing trauma education: 4 hours formal (refresher course in trauma nursing course objectives recommended by TSAC is required), 12 hours informal.

137.3(1) Topics for all or part of the continuing trauma education hours may be recommended to the department by SEQIC or TSAC based on trauma care system outcomes.

137.3(2) General requirements for continuing trauma education.

a. Three-fourths of the required continuing trauma education hours may be informal, determined and approved by a trauma care facility from any of the following:

1. Multidisciplinary trauma case reviews;
2. Multidisciplinary trauma conferences;
3. Multidisciplinary trauma mortality and morbidity reviews;
4. Multidisciplinary trauma committee meetings;
5. Trauma peer review meetings;
6. Any trauma care facility committee meeting with a focus on trauma care evaluation; and
7. Critical care education such as ACLS course, PALS course, NRP course, or equipment inservices.

b. One-fourth of the required continuing trauma education hours shall be obtained through any formalized continuing education programs.

137.3(3) Continuing trauma education (Table 4) is required every two years of currently certified emergency medical care providers involved in the initial resuscitation of the injured patient while participating on an authorized transporting service program.

Table 4

Emergency Medical Care Provider	Continuing Education Hours Per Certification Period
FR or FR-D	2 hours
EMT-A,B,D	4 hours
EMT-I	6 hours
EMT-P	8 hours

641—137.4(147A) Offenses and penalties.

137.4(1) The department may deny verification as a trauma care facility or deny authorization as a service program, may give a citation and warning, or may place on probation, suspend, or revoke existing trauma care facility verification or service program authorization if the department finds reason to believe that the facility or service program has not been or will not be operated in compliance with Iowa Code sections 147A.27 and these administrative rules. The denial, citation and warning, period of probation, suspension, or revocation shall be effected and may be appealed in accordance with the requirements of Iowa Code section 17A.12.

137.4(2) All complaints regarding the operation of a trauma care facility or service program, or those purporting to be or operating as the same, shall be reported to the department. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

137.4(3) Complaints and the investigative process shall be treated as confidential to the extent they are protected by Iowa Code section 22.7.

137.4(4) Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

137.4(5) Notice of denial, citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, citation and warning, probation, suspension, or revocation shall be served by certified mail, return receipt requested, or by personal service.

137.4(6) Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

137.4(7) A request for a hearing shall be forwarded within five working days of receipt of the request to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

137.4(8) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

137.4(9) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

137.4(10) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

137.4(11) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings on them.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

137.4(12) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or personal service.

137.4(13) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

137.4(14) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

137.4(15) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

137.4(16) Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, news media or employer.

These rules are intended to implement Iowa Code chapter 147A.

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CHAPTER 138
Reserved

CHAPTER 170
DESCRIPTION OF ORGANIZATION

[Prior to 7/29/87, Health Department[470]Ch 170]

641—170.1(17A) Definitions.

"Department" means the Iowa department of public health.

"Director" means the director of public health.

641—170.2(17A) State board of health. The state board of health, which consists of nine members, appointed by the governor, is the policymaking body for the Iowa department of public health and has the power and duty to adopt, promulgate, amend and repeal rules, consider legislation, and advise or make recommendations to the governor, general assembly, and director relative to public health, hygiene, and sanitation. The state board of health meets on the second Wednesday in July and on the second Wednesday on each second month thereafter and at such other time as may be deemed necessary by the president of the board.

641—170.3(17A) Director of public health. The director is the chief administrative officer of the department, and in that capacity directs and administers the programs and services of the department. The duties of the director include: recommendations to the state board of health; the adoption of rules for the implementation of statutes; service as secretary to the state board of health; the establishment of the administrative organization; and other actions to administer and direct the department's programs.

641—170.4(17A,135) Administrative divisions of the department. There are five divisions in the department, each directed by a division director who reports to the department director.

170.4(1) *Division of central administration/professional licensure.* The division provides support to department staff in functions of fiscal, personnel, office services, data entry, statistics, computer management, communications, special projects, administrative rules, and legislative liaison activities. The division is also responsible for carrying out Iowa Code chapter 144 (Vital Statistics Act). Staff support in licensing and certification is provided to the following boards of examiners: barber, chiropractic, cosmetology, dietetic, hearing aid dealer, mortuary science, nursing home administrator, ophthalmic dispenser, optometry, physical and occupational therapy, physician assistant, podiatry, psychology, respiratory care therapist, social work, speech pathology and audiology.

170.4(2) *Office of health planning.* The office of health planning provides interagency staffing for the Iowa health data commission and for ad hoc committees and task forces. The certificate of need program is administered by the office of health planning. Staff also provides for coordination of primary care. The office of rural health is administered by the office of health planning, providing technical assistance and resources to communities throughout the state. A nursing grant program is administered by the office of rural health. The office of health planning also coordinates the department's county health planning effort. The office also functions in the designation of health manpower shortage areas and in the review of health maintenance organizations.

170.4(3) *Division of disease prevention.* The division of disease prevention is responsible for collecting data and determining the frequency with which infectious diseases occur within Iowa's population. This includes diseases transmitted from animals to humans. Advice and assistance are provided to local communities pertaining to the incidence and control of all communicable diseases. Disease control programs are conducted for such diseases as hospital-acquired infections, sexually transmitted diseases, tuberculosis, vaccine-preventable diseases, and acquired immune deficiency syndrome (AIDS). Active monitoring of disease occurrence, case investigations, and medical consultation in diagnosis, treatment, and control are conducted daily.

Environmental health programs include asbestos and polychlorinated biphenyls compliance monitoring and toxic substance evaluations regarding toxic waste sites.

Health engineering and consumer safety programs focus on compliance with U.S. Public Health Service milk standards, various environmental water quality problems, a swimming pool and spa registration and inspection program, and product safety recalls.

Radiological health programs include the registration and licensure of radiation-emitting equipment and radiation operators. Radioactive materials are licensed and inspected, ensuring low-level radiation exposure. Radon mitigation, testing and control programs are also administered.

The division is responsible for approving laboratories that desire to perform drug testing services for businesses located or doing business in Iowa and for issuing tattoo establishment and tattoo artist permits.

The refugee health program provides interpreter services to health providers in all areas of medical and public health concern.

The emergency medical services program is responsible for the training and certification of basic care providers and for the authorization of advanced care services.

The division also maintains a centralized registry for brain and spinal cord injuries and a reporting and surveillance system for agricultural and other work-related injuries.

170.4(4) *Division of family and community health.* The division of family and community health provides support for local public health services throughout Iowa, including public health nursing services, well-elderly clinics, homemaker-home health aide services, genetic counseling services, dental public health services, maternal and child health services, family planning services, adolescent health, child health specialty clinics, and nutrition services. The division also administers the disability prevention program and reimbursement for chronic renal disease services and in-home nonnursing homemaker services for human immunodeficiency virus (HIV)-infected persons.

The division establishes program standards and assists communities to develop services by providing technical assistance, monitoring, and financial support. Most of the services are provided through contracts with city or county governmental units or agencies serving a county or regional area. Additional services are provided directly by division staff and through contracts with the University of Iowa.

170.4(5) *Division of substance abuse.* The division of substance abuse administers the statewide substance (alcohol and other drugs) abuse prevention and treatment programs of the department. Policy is established by the nine-member commission on substance abuse appointed by the governor. The primary functions of the division include: licensure of substance abuse treatment programs; administration (planning, allocation and monitoring) of federal and state funds for substance abuse prevention and treatment efforts; provision of training opportunities for substance abuse program personnel, and provision of technical assistance on substance prevention and treatment to programs and communities.

641—170.5(17A) Central office. The address of the central office is: Iowa Department of Public Health, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. Location of specific offices and the regional offices may be obtained by writing to the department at the aforesaid address.

641—170.6(17A) Business hours. The normal business hours of the department are 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

641—170.7(17A) Submission of materials. Request for applications, submission of applications, and other materials shall be made directly to the division of the department administering the program involved. Any person who submits materials should enclose a cover letter which states the use for which the materials are intended. Where the rules give specific procedure, such procedure should be followed.

641—170.8(17A) Request for information. Request for information concerning programs within the department should be addressed or telephoned to the specific division of the department. General requests for information may be made to: Public Information Section, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code sections 17A.3 and 135.11.

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CHAPTER 171
PETITIONS FOR RULE MAKING
[Prior to 7/29/87, Department of Health[470] Ch 171]

641—171.1(17A) Petition for rule making.

171.1(1) Any person or agency may file a petition for rule making with the Director, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. A petition is deemed filed when it is received by that office. The department must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF PUBLIC HEALTH

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 171.4(17A).

171.1(2) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

171.1(3) The department may deny a petition because it does not substantially conform to the required form.

641—171.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

641—171.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Director, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

641—171.4(17A) Department consideration.

171.4(1) Within 14 days after the filing of a petition, the department must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the department must schedule a brief and informal meeting between the petitioner and a member of the staff of the department, to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

171.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rulemaking proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the department mails or delivers the required notification to petitioner.

171.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 172
DECLARATORY ORDERS

[Prior to 7/29/87, Health Department[470] Ch 172]

641—172.1(17A) Petition for declaratory order. Any person may file a petition with the department of public health for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF PUBLIC HEALTH

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 172.7(17A).

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

641—172.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to 172.6(17A) to whom notice is required by any provision of law. The department may also give notice to any other persons.

641—172.3(17A) Intervention.

172.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

172.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

172.3(3) A petition for intervention shall be filed at the Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Such a petition is deemed filed when it is received by that office. The department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF PUBLIC HEALTH

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

The petition for intervention must provide the following information:

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

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

641—172.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

641—172.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

641—172.6(17A) Service and filing of petitions and other papers.

172.6(1) *Service—when required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

172.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department.

172.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 641—173.12(17A).

641—172.7(17A) Consideration. Upon request by petitioner, the department must schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department, to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

641—172.8(17A) Action on petition.

172.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the department or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

172.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 641—173.2(17A).

641—172.9(17A) Refusal to issue order.

172.9(1) The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

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

172.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

172.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

645—172.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

641—172.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

641—172.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 173
CONTESTED CASES
[Prior to 7/29/87, Health Department[470] Ch 173]

641—173.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the department of public health.

641—173.2(17A) Definitions. Except where otherwise specifically defined by law:

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

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

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

"Presiding officer" means an administrative law judge from the department of inspections and appeals or the director of the department or the members of a multimember board or commission.

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

641—173.3(17A) Time requirements.

173.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

173.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

641—173.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

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

641—173.5(17A) Notice of hearing.

173.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

b. Certified mail, return receipt requested; or

c. First-class mail; or

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

173.5(2) *Contents.* The notice of hearing shall contain the following information:

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

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

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

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

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

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

g. Reference to the procedural rules governing informal settlement;

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

i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 173.6(17A), that the presiding officer be an administrative law judge.

641—173.6(17A) Presiding officer.

173.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the director of the department or members of the department.

173.6(2) The department may deny the request only upon a finding that one or more of the following apply:

a. Neither the department nor any officer of the department under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

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

c. An administrative law judge with the qualifications identified in subrule 173.6(4) is unavailable to hear the case within a reasonable time.

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

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

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

g. The request was not timely filed.

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

173.6(3) The department shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 173.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

173.6(4) An administrative law judge assigned to act as presiding officer in a contested case shall have the following technical expertness unless waived by the department: a J.D. degree.

173.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the department. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

173.6(6) Unless otherwise provided by law, the director of the department and members of multimember boards and commissions, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

641—173.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the department in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

641—173.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

641—173.9(17A) Disqualification.

173.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

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

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

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

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

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

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

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

173.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 173.9(3) and 173.23(9).

173.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

173.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 173.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 173.25(17A) and seek a stay under rule 173.29(17A).

641—173.10(17A) Consolidation—severance.

173.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

173.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

641—173.11(17A) Pleadings.

173.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

173.11(2) Answer. An answer shall be filed within 20 days of service of the notice of hearing unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

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

173.11(3) Amendment. Notices of hearing and answers may be amended with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

641—173.12(17A) Service and filing of pleadings and other papers.

173.12(1) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state or the department, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

173.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

173.12(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All documents that are required to be served upon a party shall be filed simultaneously with the department.

173.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the department, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

173.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

641—173.13(17A) Discovery.

173.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

173.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 173.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

173.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

641—173.14(17A) Subpoenas.

173.14(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

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

173.14(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

641—173.15(17A) Motions.

173.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

173.15(2) Any party may file a written response to a motion within ten days after the motion is served. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

173.15(3) The presiding officer may schedule oral argument on any motion.

173.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by an order of the presiding officer.

173.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 173.28(17A) and appeal pursuant to 173.27(17A).

641—173.16(17A) Prehearing conference.

173.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

173.16(2) Each party shall bring to the prehearing conference:

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

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

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

173.16(3) In addition to the requirements of subrule 173.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

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

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

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

173.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

641—173.17(17A) Continuances. Applications for continuances shall be made to the presiding officer.

173.17(1) A written application for a continuance shall:

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

b. State the specific reasons for the request; and
c. Be signed by the requesting party or the party's representative.

173.17(2) In determining whether to grant a continuance, the presiding officer may consider:
a. Prior continuances;
b. The interests of all parties;
c. The likelihood of informal settlement;
d. The existence of an emergency;
e. Any objection;
f. Any applicable time requirements;
g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
h. The timeliness of the request; and
i. Other relevant factors.

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

641—173.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with department rules. Unless otherwise provided, a withdrawal shall be with prejudice.

641—173.19(17A) Intervention.

173.19(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

173.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

173.19(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

173.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

641—173.20(17A) Hearing procedures.

173.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

173.20(2) All objections shall be timely made and stated on the record.

173.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

173.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

173.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

173.20(6) Witnesses may be sequestered during the hearing.

173.20(7) The presiding officer shall conduct the hearing in the following manner:

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

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

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

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

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

641—173.21(17A) Evidence.

173.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

173.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

173.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

173.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

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

173.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

173.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

641—173.22(17A) Default.

173.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

173.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

173.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 173.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

173.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

173.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

173.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

173.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 173.25(17A).

173.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

173.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

173.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 173.29(17A).

641—173.23(17A) Ex parte communication.

173.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 173.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

173.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

173.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

173.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 173.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

173.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

173.23(6) The division director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 173.23(1).

173.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 173.17(17A).

173.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

173.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

173.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the department. Violation of ex parte communication prohibitions by department personnel shall be reported to the director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

641—173.24(17A) Recording costs. Upon request, the department shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

641—173.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the director or board or commission may review an interlocutory order of the presiding officer. In determining whether to do so, the director or board or commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the department at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

641—173.26(17A) Final decision.

173.26(1) When the director of the department presides over the reception of evidence at the hearing, the decision is a final decision.

173.26(2) When the director of the department does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the department without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 173.27(17A).

641—173.27(17A) Appeals and review.

173.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the director within 30 days after issuance of the proposed decision.

173.27(2) *Review.* The director may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

173.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

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

d. The relief sought;

e. The grounds for relief.

173.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The director may remand a case to the presiding officer for further hearing or the director may preside at the taking of additional evidence.

173.27(5) *Scheduling.* The department shall issue a schedule for consideration of the appeal.

173.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The director may resolve the appeal on the briefs or provide an opportunity for oral argument. The director may shorten or extend the briefing period as appropriate.

641—173.28(17A) Applications for rehearing.

173.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

173.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the department decision on the existing record and whether, on the basis of the grounds enumerated in subrule 173.27(4), the applicant requests an opportunity to submit additional evidence.

173.28(3) *Time of filing.* The application shall be filed with the department within 20 days after issuance of the final decision.

173.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the department shall serve copies on all parties.

173.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the department grants the application within 20 days after its filing.

641—173.29(17A) Stays of department actions.

173.29(1) *When available.*

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

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

173.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or the board, commission, or director, as appropriate, shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

173.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

641—173.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

641—173.31(17A) Emergency adjudicative proceedings.

173.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order the department shall consider factors including, but not limited to, the following:

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

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

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

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

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

173.31(2) *Issuance of order.*

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

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

(1) Personal delivery;

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

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

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

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

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

173.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

173.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

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

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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[Filed emergency 9/19/86—published 10/8/86, effective 9/19/86]
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[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]

*See IAB, Inspections and Appeals Department.

c. Guidelines.

(1) The evidence must demonstrate that implementation of the proposed change will clearly, specifically, and directly solve or alleviate the potential harm or danger to the public as identified in the application.

(2) Any and all evident alternatives to the proposal must be evaluated to determine if they might be a more efficient method of ensuring the public health, safety and welfare. This evaluation shall include a review of recognized systems of private credentialing, professional standards of conduct and codes of ethics.

(3) Methods which demonstrate cost-effectiveness may include, but are not limited to:

1. The request for regulation is commensurate with the extent of potential harm or danger;
2. There is no other reasonable means by which to protect the public; or
3. Effective supervision of practitioners by members of an existing health profession is inappropriate or fails to provide adequate safeguards to protect the public.

641—194.9(77GA,HF710) Pilot project, evaluation; report to the general assembly. The scope of practice review process and committees are initiated as a pilot project commencing on July 1, 1997, and ending June 30, 2000.

The director shall submit a final report to the general assembly by January 1, 2000, detailing an evaluation of the degree of success realized by the pilot project in implementing scope of practice review committees; a description and explanation of all applications received and issues reviewed; a synopsis of the impact and contributions review committee recommendations had on public health care policy development; and suggestions regarding the continuation of and modifications in the scope of practice review process.

These rules are intended to implement 1997 Iowa Acts, House File 710, section 6.

[Filed 7/11/97, Notice 6/4/97—published 7/30/97, effective 9/3/97]
[Filed 7/10/98, Notice 4/8/98—published 7/29/98, effective 9/2/98]

CHAPTER 195
STUDENT LOAN DEFAULT/NONCOMPLIANCE WITH AGREEMENT FOR PAYMENT OF OBLIGATION

641—195.1(261) General definitions. For the purposes of this chapter, the following definitions shall apply:

"Certificate of noncompliance" means written certification from the college student aid commission to the licensing authority certifying that the licensee has defaulted on an obligation owed to or collected by the commission.

"Commission" means the college student aid commission.

"Department" means the department of public health.

"Licensing authority" means the department or board.

641—195.2(261) Issuance or renewal of a license—denial. The department or board shall deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127.

195.2(1) In order to process the certificate of noncompliance received by the department or board, the department or board will maintain records of licensees by name, current known address, and social security number.

195.2(2) Upon receipt of a certificate of noncompliance duly issued by the commission, the department or board shall initiate procedures for denial of issuance or renewal of licensure.

195.2(3) The department or board shall provide notice to the licensee or applicant informing that person of the board's intent to deny the license and said notice shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. The notice shall state all of the following:

a. The licensing authority intends to deny issuance or renewal of an individual's license due to the receipt of a certificate of noncompliance from the commission.

b. The individual must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within 30 days of the issuance of the notice under this subrule, the individual's license shall be denied.

195.2(4) The applicant or licensee served with a notice under 195.2(3) above shall not have a right to a hearing before the board but may request a court hearing pursuant to Iowa Code section 261.127. Such court hearing must be requested within 30 days of the provision of notice.

195.2(5) The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

195.2(6) The department's or board's administrator is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or licensee.

195.2(7) All department or board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the department or board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

195.2(8) In the event an applicant or licensee timely files a district court action following service of a department or board notice pursuant to Iowa Code section 261.126, the department or board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department or board to proceed.

195.2(9) Upon the filing of a district court action, the applicant or licensee shall promptly file a copy of the petition filed with the district court with the department or board. In addition, the applicant or licensee shall provide the department or board with copies of all court orders and rulings entered in such action within seven days of the action.

195.2(10) For purposes of determining the effective date of the denial of the issuance or renewal of a license, the department or board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

641—195.3(261) Suspension or revocation of a license. The department or board shall suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to the provisions contained in those sections, the following shall apply:

195.3(1) In order to process the certificate of noncompliance received by the department or board, the department or board will maintain records of licensees by name, current known address, and social security number.

195.3(2) Upon receipt of a certificate of noncompliance duly issued by the commission, the board shall initiate procedures for suspension or revocation of licensure.

195.3(3) The board shall provide notice to the licensee informing that person of the board's intent to suspend or revoke the license and said notice shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. The notice shall state all of the following:

a. The licensing authority intends to suspend or revoke an individual's license due to the receipt of a certificate of noncompliance from the commission.

b. The individual must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within 30 days of the issuance of the notice under this subrule, the individual's license shall be suspended or revoked.

195.3(4) The licensee served with a notice under 195.3(3) above shall not have a right to a hearing before the board but may request a court hearing pursuant to Iowa Code section 261.127. Such court hearing must be requested within 30 days of the provision of notice.

195.3(5) The effective date of the suspension or revocation of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee.

195.3(6) The department's or board's administrator is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the licensee.

195.3(7) All department or board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the department or board has suspended or revoked a license pursuant to Iowa Code chapter 261.

195.3(8) In the event a licensee timely files a district court action following service of a department or board notice pursuant to Iowa Code section 261.126, the department or board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department or board to proceed.

195.3(9) Upon the filing of a district court action, the licensee shall promptly file a copy of the petition filed with the district court with the department or board. In addition, the licensee shall provide the department or board with copies of all court orders and rulings entered in such action within seven days of the action.

195.3(10) For purposes of determining the effective date of the suspension or revocation, the department or board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

641—195.4(17A,22,261) Sharing of information. Notwithstanding any statutory confidentiality provision, the department or board may share information with the commission for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code chapter 261.

These rules are intended to implement Iowa Code chapter 261.

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

CHAPTERS 196 to 199
Reserved

CHAPTER 200
STANDARDS COMMITTEE PROCEDURES—CHANGES IN STANDARDS FOR THE STATE HEALTH PLAN

Rescinded IAB 5/30/90, effective 7/4/90

PROFESSIONAL LICENSURE DIVISION[645]

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

CHAPTERS 1 to 5
Reserved

CHAPTER 6
PETITIONS FOR RULE MAKING

The division of professional licensure 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:

645—6.1(17A) Petition for rule making. In lieu of the words "(Designate office)", insert the name of the specific board in professional licensure. A request for access to a record should be addressed to the Professional Licensure Division, Lucas State Office Building, Des Moines, Iowa 50319-0075.

In lieu of the words "(AGENCY NAME)", the heading of the petition should read:

BEFORE THE BOARD OF EXAMINERS FOR THE LICENSING AND REGULATION OF
(INSERT SPECIFIC BOARD NAME FOR A BOARD LISTED IN THE PROFESSIONAL
LICENSURE DIVISION)

645—6.2(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the (name of the specific board), Professional Licensure Division, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 7
AGENCY PROCEDURE FOR RULE MAKING

645—7.1(17A) Adoption by reference. The professional licensure division 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:

1. In lieu of the words "(commission, board, council, director)", insert "board".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Administrator, Professional Licensure Division, Public Health Department, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)424-6385".
5. In lieu of the words "(designate office)", insert "Professional Licensure Division, Public Health Department, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Professional Licensure Division, Public Health Department, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 8
DECLARATORY ORDERS

The division of professional licensure 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:

645—8.1(17A) Petition for declaratory order. In lieu of the words "(Designate office)", insert "(name of specific licensing board in the professional licensure division), Professional Licensure, Department of Public Health, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075".

In lieu of the words "(AGENCY NAME)", the heading on the petition should read:

BEFORE THE (insert the name of the specific board in the professional licensure division)

645—8.2(17A) Notice of petition. In lieu of the words "__ days (15 or less)", insert "15 days".

645—8.3(17A) Intervention.

8.3(1) In lieu of the words "__ days", insert "15 days".

645—8.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "(name of the specific board in the professional licensure division), Professional Licensure, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075".

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

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

CHAPTER 9
COMPLAINTS AND INVESTIGATIONS

645—9.1(272C) Complaints.

9.1(1) A complaint shall be made in writing and shall be mailed or delivered to the Board of _____ Examiners, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The complaint shall include the name and address of the complainant, the name of the licensee, and a concise statement of the allegations against the licensee. A complaint may also be initiated upon the board's own motion pursuant to evidence received by the board. Timely filing of complaints is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

9.1(2) A person shall not be civilly liable as a result of filing a complaint with the board, or for the disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with the duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

645—9.2(272C) Report of malpractice claims or actions or disciplinary actions. Each licensee shall submit a copy of any judgment or settlement in a malpractice claim or any disciplinary action taken by another licensing authority in another state or jurisdiction to the board within 30 days of the date of occurrence.

645—9.3(272C) Report of acts or omissions. Each licensee having first-hand knowledge of acts or omissions of the board's statute or administrative rules shall report to the board those acts or omissions when committed by another person licensed to practice by the board. The report shall include the name and address of the licensee and the date, time, and place of the incident.

645—9.4(272C) Investigation of complaints or reports. The chairperson of the board may assign an investigation of a complaint or report to a member of the board or may request an investigator from the department of inspections and appeals to investigate the complaint or report. The investigating board member or the investigator may request information from any peer review committee which may be established to assist the board. The investigating board member or investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. A board member who has personally investigated a complaint is disqualified from participating in any contested case proceeding resulting from the investigation.

645—9.5(17A,272C) Issuance of investigatory subpoenas.

9.5(1) The board administrator or designee may, upon the written request of a board investigator or on the administrator's own initiative, subpoena books, papers, records, and other real evidence which is necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

a. The nature of the complaint reasonably justifies the issuance of a subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

9.5(2) A written request for a subpoena or the administrator's written memorandum in support of the issuance of a subpoena shall contain the following:

a. The name and address of the person to whom the subpoena will be directed;

b. A specific description of the books, papers, records or other real evidence requested;

c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

d. In the case of a subpoena request for mental health records, confirmation that the conditions described in 9.5(1) have been satisfied.

9.5(3) Each subpoena shall contain:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production, or inspection and copying;

d. The time within which a motion to quash or modify the subpoena must be filed;

e. The signature, address and telephone number of the board administrator or designee;

f. The date of issuance;

g. A return of service.

9.5(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

9.5(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

9.5(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board administrator, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

9.5(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

645—9.6(272C) Peer review committees.

9.6(1) A complaint may be assigned to a peer review committee for review, investigation, or report to the board.

9.6(2) The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, or report to the board.

9.6(3) Members of the peer review committees shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

9.6(4) The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

645—9.7(17A) Appearance. The board may request that a licensee appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the licensee waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding. By electing to participate in the committee appearance, the licensee further waives any objection to the board administrator assisting the board in the contested case proceeding.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 272C.

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CHAPTER 10
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The professional licensure division of the public health department hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

645—10.1(17A,22) Definitions. As used in this chapter:

"Board" means a particular professional licensing board.

645—10.3(17A,22) Requests for access to records.

10.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "board administrator" or the particular agency office where the record is kept. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the Professional Licensure Division, Lucas State Office Building, Des Moines, Iowa 50319-0075.

10.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. excluding Saturdays, Sundays and legal holidays.

10.3(7) *Fees.*

c. *Search and supervisory fee.* An hourly fee may be charged for actual agency expenses in searching for and supervising the examination and copying of requested records when the time required is in excess of one hour. The custodian shall prominently post in agency offices the hourly fees to be charged for search and supervision of records. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

645—10.5(17A,22) Request for treatment of a record as a confidential record and its withholding from examination.

10.5(7) This rule does not allow a person to request confidential record status for records of licensee disciplinary proceedings which are required by law to be public records.

645—10.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)" insert "the board administrator".

645—10.9(17A,22) Disclosures without the consent of the subject.

10.9(1) Open records are routinely disclosed without the consent of the subject.

10.9(2) To the extent allowed by law, disclosure of confidential records occurs without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without consent of the subject:

a. For a routine use as defined in rule 10.10(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. Investigative information in the possession of a licensing board or its employees or agents which relates to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authority in another state, the District of Columbia, or territory or country in which the licensee is licensed or has applied for a license. If the investigative information in the possession of a licensing board or its employees or agents indicates a crime has been committed, the information shall be reported to the proper law enforcement agency.

d. To the legislative fiscal bureau under Iowa Code section 2.52.

e. Disclosures in the course of employee disciplinary proceedings.

f. In response to a court order or subpoena.

645—10.10(17A,22) Routine use.

10.10(1) Defined. *"Routine use"* means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

10.10(2) To the extent allowed by law, the following uses are considered routine uses of all board records:

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

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals and the attorney general's office for the matters in which it is performing services or functions on behalf of the board.

d. Transfers of information within the board office and among board members, to other state boards and departments, or to local units of government as appropriate to carry out the board's statutory authority.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

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

g. Disclosure to the public and news media of pleadings, motions, orders, final decisions and informal settlements filed in licensee disciplinary proceedings.

h. Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

645—10.11(17A,22) Consensual disclosure of confidential records.

10.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 10.7(17A,22).

10.11(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 matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

645—10.12(17A,22) Release to subject.

10.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 10.6(17A,22). However, the board need not release the following records to the subject:

a. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline is required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding.

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. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

10.12(2) Where 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.

645—10.13(17A,22) Availability of records.

10.13(1) *General.* Board records are open for public inspection and copying unless otherwise provided by rule or law.

10.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. All information in complaint and investigation files maintained by the board, or peer review committee acting under the authorization of the board, for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing.

b. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders.

c. Criminal history or prior misconduct of an applicant for licensure, pursuant to Iowa Code section 147.21(1).

d. Information relating to the contents of an examination for licensure, pursuant to Iowa Code section 147.21(2).

e. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination pursuant to Iowa Code section 147.2(3).

f. Minutes and tape recordings of portions of board meetings held in closed sessions, pursuant to Iowa Code section 21.5(4).

g. Records which are exempt from disclosure under Iowa Code section 22.7.

h. 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."*

i. Those portions of board staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by board staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

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

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. (All under Iowa Code sections 17A.2 and 17A.3)

j. Information in nonlicensee and investigation files maintained by the board which are otherwise exempt from disclosure under Iowa Code section 22.7 or other provisions of the law.

k. Records made confidential under any other provision of law.

10.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited discretionary disclosure as provided in rule 10.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 10.4(3).

645—10.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 10.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, and the means of storage of that information. The board does not use a data processing system to match, collate, or permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the board are:

10.14(1) *Records of board disciplinary hearings.* These records contain information about licensees who are the subject of a board disciplinary proceeding or other action. This information is stored on paper, and electronically in the event the hearing is tape recorded.

10.14(2) *Complaint reports.* These records contain information about licensees and the people they serve. This information is collected pursuant to Iowa Code sections 272C.3 and 272C.4. This information is stored on paper only.

10.14(3) *Investigative reports.* These records contain information about the subjects of board investigations and the activities of board investigators. The records may include a variety of attachments such as interviews, audits, medical records, exhibits, police reports, and investigators' comments, conclusions and recommendations. This information is collected pursuant to Iowa Code sections 272C.3, 272C.4, and 272C.5. This information is stored on paper and electronically.

10.14(4) *Declaratory rulings.*

10.14(5) *Licensure records.* These records contain information about the licensee including any or all of the following: transcripts, collected pursuant to Iowa Code section 147.19; application for licensure by examination, collected pursuant to Iowa Code sections 147.29 through 147.43; birth certificates, collected pursuant to Iowa Code section 147.3; references, collected pursuant to Iowa Code section 147.3; past felony record, collected pursuant to Iowa Code section 147.3; high school graduation or equivalency records, collected pursuant to Iowa Code section 147.29; examination scores, collected pursuant to Iowa Code section 147.34; continuing education records, collected pursuant to Iowa Code section 272C.2. In the case of licensure by endorsement the board collects verification of licensure by another board pursuant to Iowa Code section 147.47. This information is stored on paper or microfilm only.

10.14(6) *Information on nonlicensee complaint and nonlicensee investigation files maintained by the board.* This information is collected pursuant to Iowa Code chapter 147. This information is stored on paper only.

645—10.15(22) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the board other than record systems as defined in rule 10.2(17A,22). These records are not maintained or retrieved by personal identifiers. These records are routinely available to the public. However, the board's files of these records listed in subrules 10.14(1) to 10.14(6) may contain information about individuals. The only information stored electronically is names, addresses, current status of licenses, licensee number and statistical information pertaining to individuals. All other information is stored on paper. These records include:

1. Records of board rule-making procedures. Rule-making records may contain information about individuals making written or oral comments or proposed rules.

2. Agendas, minutes and materials presented to the board are available from the office of the board except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). These records may contain information about individuals who participate in board meetings.

3. Publications. News releases, annual reports, project reports, board newsletters, etc. are available from the office of the board. Brochures describing various board programs are available at local offices of the board.

Board news releases, project reports, and newsletters may contain information about individuals, including board members or staff.

4. Statistical reports. Statistical reports do not contain personally identifiable information.

5. Board decisions, final orders or agreements, advisory opinions and other statements of law or policy issued by the board in the performance of its functions. These records are open pursuant to Iowa Code section 272C.6(4) except for information that is confidential pursuant to subrule 10.13(2)*"c."*

6. Financial reports pertaining to the board's budget including its revenues and expenses. This information is stored electronically and on paper.

7. Blank forms utilized by the board and its staff in the performance of its function. This information is stored on paper only.

8. A record inventory of all categories of information and records maintained by or on behalf of the board. This inventory is stored on paper only.

9. All other records that are not exempted from disclosure by law.

645—10.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

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

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

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

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, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 11
CONTESTED CASES

645—11.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the board of _____ examiners.

645—11.2(17A) Definitions. Except where otherwise specifically defined by law:

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

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

"Party" means the state or the respondent.

"Presiding officer" means the board of _____ examiners.

645—11.3(17A) Time requirements.

11.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

11.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

645—11.4(17A) Probable cause. In the event the board finds there is probable cause for taking disciplinary action against a licensee following investigation, the board shall order a contested case hearing be commenced by the filing of a statement of charges and notice of hearing.

645—11.5(17A) Legal review. Every statement of charges and notice of hearing prepared by the board shall be reviewed by the office of the attorney general prior to filing.

645—11.6(17A) Statement of charges and notice of hearing.

11.6(1) *Delivery.* Delivery of the statement of charges and notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

b. Restricted certified mail, return receipt requested; or

c. Publication, as provided in the Iowa Rules of Civil Procedure.

11.6(2) *Contents.* The statement of charges and notice of hearing shall contain the following information:

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

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

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

d. A short and plain statement of the matters asserted. This statement shall contain sufficient detail to give the respondent fair notice of the allegations so that the respondent may adequately respond to the charges, and to give the public notice of the matters at issue;

e. Identification of all parties including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the parties' counsel, if known;

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

g. Reference to the procedural rules governing informal settlement;

h. Identification of the board as the presiding officer; and

i. Notification of the time period in which a party may request, when applicable, and pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rules 11.8(17A,272C) and 11.9(17A,272C), that the presiding officer be an administrative law judge.

645—11.7(17A,272C) Legal representation. Following the filing of the statement of charges and notice of hearing, the office of the attorney general shall be responsible for the legal representation of the public interest in all proceedings before the board.

645—11.8(17A,272C) Presiding officer in a disciplinary contested case. The presiding officer in a disciplinary contested case shall be the board. However, the board may request that an administrative law judge assist the board with initial rulings on prehearing matters. Decisions of the administrative law judge serving in this capacity are subject to the interlocutory appeal provisions of rule 11.24(17A). In addition, an administrative law judge may assist and advise the board at the contested case hearing.

645—11.9(17A) Presiding officer in a nondisciplinary contested case.

11.9(1) Any party in a nondisciplinary contested case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board.

11.9(2) The board may deny the request only upon a finding that one or more of the following apply:

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

b. An administrative law judge with the qualifications identified in 11.9(4) is unavailable to hear the case within a reasonable time.

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

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

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

f. The request was not timely filed.

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

11.9(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in 11.9(4), the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

11.9(4) An administrative law judge assigned to act as presiding officer in a nondisciplinary contested case shall have a J.D. degree unless waived by the agency.

11.9(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer in a nondisciplinary contested case are subject to appeal to the board. A party must seek appeal to the board in order to exhaust adequate administrative remedies. Such appeals must be filed within ten days of the date of the issuance of the challenged ruling, but no later than the time for compliance with the order or the date of hearing, whichever is first.

11.9(6) Unless otherwise provided by law, when reviewing a proposed decision of an administrative law judge in a nondisciplinary contested case upon appeal, the board shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

645—11.10(17A) Disqualification.

11.10(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

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

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

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

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

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

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

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

11.10(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by 1998 Iowa Acts, chapter 1202, section 19(3), and subrules 11.10(3) and 11.22(9).

11.10(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

11.10(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.10(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. The board shall determine the matter as part of the record in the case.

645—11.11(17A) Consolidation—severance.

11.11(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where the matters at issue involve common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues involved; and consolidation would not adversely affect the rights of any of the parties to those proceedings.

11.11(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

645—11.12(17A) Answer.

11.12(1) An answer shall be filed within 20 days of service of the statement of charges and notice of hearing.

11.12(2) An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the statement of charges. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the respondent may claim.

11.12(3) An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

11.12(4) Any allegation in the statement of charges not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

11.12(5) Amendments to the statement of charges and to an answer may be allowed with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

645—11.13(17A) Service and filing.

11.13(1) *Service—when required.* Every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, including the assistant attorney general designated as prosecutor for the state, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

11.13(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

11.13(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the board. All documents that are required to be served upon a party shall be filed simultaneously with the board.

11.13(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Board of _____ Examiners, Board Administrator, Lucas State Office Building, Des Moines, Iowa 50319, or delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

11.13(5) *Proof of mailing.* Proof of mailing includes a legible United States Postal Service postmark on the envelope, a certificate of service, or a notarized affidavit.

645—11.14(17A) Discovery.

11.14(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

11.14(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

645—11.15(17A,272C) Issuance of subpoenas in a contested case.

11.15(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Subpoenas shall be issued by the board administrator or designee upon written request. A request for a subpoena of mental health records must confirm the conditions described in 645—subrule 9.5(1) prior to the issuance of the subpoena.

11.15(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time, and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other real evidence requested;

f. The date, time and location for production, or inspection and copying; and

g. In the case of a subpoena request for mental health records, confirmation that the conditions described in 645—subrule 9.5(1) have been satisfied.

11.15(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time, and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other real evidence the person is commanded to produce;

g. The date, time and location for production, or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the board administrator or designee;

j. The date of issuance;

k. A return of service.

11.15(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the board administrator or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

11.15(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

11.15(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

11.15(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board administrator, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

11.15(8) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

645—11.16(17A) Motions.

11.16(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.16(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

11.16(3) The presiding officer may schedule oral argument on any motion.

11.16(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

645—11.17(17A) Prehearing conferences.

11.17(1) Any party may request a prehearing conference. Prehearing conferences shall be conducted by the board administrator, who may request the assistance of an administrative law judge. A written request for prehearing conference or an order for prehearing conference on the board administrator's own motion shall be filed prior to the contested case hearing, but no later than 20 days prior to the hearing date. Written notice of the prehearing conference shall be given by the board administrator to all parties. For good cause the board administrator may permit variances from this rule.

11.17(2) The parties at a prehearing conference shall be prepared to discuss the following subjects, and the board administrator or administrative law judge may issue appropriate orders concerning:

a. The possibility of settlement.

b. The entry of a scheduling order to include deadlines for completion of discovery.

c. Stipulations of law or fact.

d. Stipulations on the admissibility of exhibits.

e. Submission of expert and other witness lists. Witness lists may be amended subsequent to the prehearing conference within the time limits established by the board administrator or administrative law judge at the prehearing conference. Any such amendments must be served on all parties. Witnesses not listed on the final witness list may be excluded from testifying unless there was good cause for the failure to include their names.

f. Submission of exhibit lists. Exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the board administrator or administrative law judge at the prehearing conference. Exhibits other than rebuttal exhibits that are not listed on the final exhibit list may be excluded from admission into evidence unless there was good cause for the failure to include them.

g. Stipulations for waiver of any provision of law.

h. Identification of matters which the parties intend to request be officially noticed.

i. Consideration of any additional matters which will expedite the hearing.

11.17(3) Prehearing conferences may be conducted by telephone unless otherwise ordered.

645—11.18(17A) Continuances.

11.18(1) Applications for continuances shall be filed with the board. In the event the application for continuance is not contested, the board administrator shall issue the appropriate order. In the event the application for continuance is contested, the matter shall be heard by the board or may be delegated by the board to an administrative law judge.

11.18(2) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than five working days before the hearing. Within five working days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating, or emergency circumstances;

b. State the specific reasons for the request; and

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

11.18(3) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The public interest;

d. The likelihood of informal settlement;

e. The existence of an emergency;

f. Any objection;

g. Any applicable time requirements;

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

i. The timeliness of the request; and

j. Other relevant factors.

11.18(4) The presiding officer may require documentation of any grounds for continuance.

645—11.19(17A,272C) Hearing procedures.

11.19(1) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. The presiding officer may request that an administrative law judge perform any of these functions and may be assisted and advised by an administrative law judge.

11.19(2) All objections shall be timely made and stated on the record.

11.19(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at their own expense.

11.19(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

11.19(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

11.19(6) Witnesses may be sequestered during the hearing.

11.19(7) The presiding officer shall have authority to grant immunity from disciplinary action to a witness as provided by Iowa Code section 272C.6(3).

11.19(8) The presiding officer shall conduct the hearing in the following manner:

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

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

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

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

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

11.19(9) The board members and the administrative law judge have the right to question a witness. Examination of witnesses is subject to properly raised objections.

11.19(10) The hearing shall be open to the public unless the licensee requests that the hearing be closed.

645—11.20(17A) Evidence.

11.20(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

11.20(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.20(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

11.20(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

11.20(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record.

11.20(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

645—11.21(17A) Default.

11.21(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

11.21(2) Where appropriate and not contrary to law, any party may move for default against a party who has failed to appear after proper service.

11.21(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

11.21(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

11.21(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

11.21(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

11.21(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 11.24(17A).

11.21(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

11.21(9) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 11.26(17A).

645—11.22(17A) Ex parte communication.

11.22(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this provision is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

11.22(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

11.22(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

11.22(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 11.6(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

11.22(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

11.22(6) The board administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a final decision under any provision of law and they comply with this rule.

11.22(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

11.22(8) A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

11.22(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

11.22(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by board personnel shall be reported to the board and its board administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

645—11.23(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

645—11.24(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the board administrator or an administrative law judge. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

645—11.25(17A) Applications for rehearing.

11.25(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order. The filing of an application for rehearing is not necessary to exhaust administrative remedies for purposes of judicial review.

11.25(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether the applicant requests an opportunity to submit additional evidence.

11.25(3) *Additional evidence.* A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceedings, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding. A written request to present additional evidence must be filed with the application for rehearing or, by a nonappealing party, within 14 days of service of the notice of appeal.

11.25(4) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

11.25(5) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

11.25(6) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

645—11.26(17A) Stays of agency actions.

11.26(1) *When available.* Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying a stay or other temporary remedy.

11.26(2) *When granted.* In determining whether to grant a stay, the board shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23.

645—11.27(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

645—11.28(17A) Emergency adjudicative proceedings.

11.28(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order.

11.28(2) Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

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

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

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

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

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

11.28(3) Issuance of order.

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

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

(1) Personal delivery;

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

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

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

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

d. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the person who is required to comply with the order.

e. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

f. Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the person who is required to comply with the order is the party requesting the continuance.

645—11.29(17A) Appeal. Any appeal to district court from a decision in a contested case shall be taken within 30 days from the date of issuance of the decision by the board pursuant to Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202.

645—11.30(272C) Publication of decisions. Final decisions of the board in a contested case shall be transmitted to the appropriate association, the news media, and the employer.

645—11.31(272C) Reinstatement.

11.31(1) Any person whose license to practice has been revoked or suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the license is permanently revoked.

11.31(2) If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

11.31(3) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement shall be subject to the same rules of procedure as other cases before the board.

11.31(4) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

11.31(5) An order denying or granting reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law. The order shall be published as provided for in this chapter.

645—11.32(17A,272C) License denial.

11.32(1) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically delineate the facts to be contested at hearing.

11.32(2) All hearings held pursuant to this rule shall be held pursuant to the process outlined in this chapter.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 12
INFORMAL SETTLEMENT

645—12.1(17A,272C) Informal settlement.

12.1(1) *Informal settlement—parties.* A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by an assistant attorney general, the respondent, or the board. The board shall designate a board member with authority to negotiate on behalf of the board. The full board shall not be involved in negotiations until the presentation of a final, written, signed informal settlement to the full board for approval.

12.1(2) *Informal settlement—waiver of notice and opportunity to be heard.* Consent to negotiation by a respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code chapter 17A during informal settlement negotiation, and the assistant attorney general is thereafter authorized to discuss informal settlement with the board's designee until that consent is expressly withdrawn.

12.1(3) *Informal settlement—board approval.* All informal settlements are subject to approval of a majority of the board. No informal settlement shall be presented to the board for approval except in final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

12.1(4) *Informal settlement—disqualification of designee.* A board member who is designated to act in negotiation of settlement is not disqualified from participating in the contested case should the case proceed to hearing.

12.1(5) *Voluntary surrender.* The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted in connection with a disciplinary proceeding, has the same force and effect as an order of revocation.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapter 272C.

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CHAPTER 13
DISCIPLINE

645—13.1(272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed $1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—13.2(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating facts or other countervailing considerations.
4. The number of prior violations or complaints.
5. The seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—13.3(272C) Conduct of persons attending meetings.

13.3(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

13.3(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board member at the meeting.

These rules are intended to implement Iowa Code sections 21.7, 272C.4, 272C.5, and 272C.6.

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CHAPTER 14
CHILD SUPPORT NONCOMPLIANCE

645—14.1(252J) Adoption by reference. The division of professional licensure hereby adopts 641—Chapter 192, "Child Support Noncompliance," as 645—Chapter 14, with the following amendment:

"Board" means a particular professional licensing board in the division of professional licensure.

These rules are intended to implement Iowa Code chapter 252J.

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CHAPTER 15
NONCOMPLIANCE OF LOAN REPAYMENT

645—15.1(261) Adoption by reference. The division of professional licensure hereby adopts 641—Chapter 195, "Noncompliance of Loan Repayment," to appear as 645—Chapter 15.

These rules are intended to implement Iowa Code chapter 261.

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CHAPTER 16
IMPAIRED PRACTITIONER REVIEW COMMITTEE

The division of professional licensure hereby adopts 641—Chapter 193, "Impaired Practitioner Review Committee," as 645—Chapter 16, with the following amendment:

645—16.1(272C) Impaired practitioner review committee.

16.1(1) Definitions.

"Board" means a particular professional licensing board in the division of professional licensure.

These rules are intended to implement Iowa Code chapter 272C.

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CHAPTER 17
MATERIALS FOR BOARD REVIEW

645—17.1(147) Materials for board review. Materials received at least one week before a regularly scheduled meeting shall be placed on the agenda for board review. Materials from emergency or unusual circumstances may be added to the agenda with the chairperson's approval. All other materials received after this deadline will be reviewed at the next regularly scheduled meeting of the board.

This rule is intended to implement Iowa Code chapter 147.

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CHAPTERS 18 and 19
Reserved

701—7.4(17A) Computation of time, filing of documents. In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

All documents or papers required to be filed with the department shall be considered as timely filed if they are either received by the department's principal office or are postmarked for delivery to the department's principal office within time limits as prescribed by law or by rules or orders of the department.

In all cases where the time for the filing of a protest or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.

701—7.5(17A) Form and style of papers. All pleadings, petitions, briefs and motions or other documents filed with the department shall be typewritten, shall have a proper caption, and a signature and copies as herein provided or as specified in some other rule.

7.5(1) Papers shall be typed on only one side of plain white paper. Pleadings, petitions, motions, orders and any other papers allowed or required to be filed by these rules may be on any size paper. Citations should be underscored.

7.5(2) The proper caption shall be placed in full upon the first paper filed.

7.5(3) The signature of the petitioner, party, or authorized representative shall be subscribed in writing to the original of all pleadings, petitions, briefs or motions and shall be an individual and not a firm name except that the signature of a corporation shall be the name of the corporation by one of its active officers. The name and mailing address of the party or the party's representative actually signing shall be typed or printed immediately beneath the written signature. The signature shall constitute a certification that the signer has read the document; that to the best of the signer's knowledge, information and belief every statement contained in the document is true and no such statement is misleading; and that it is not interposed for delay.

7.5(4) Every pleading (other than protest) or motion or brief shall bear proof of service upon the opposing party as provided by the Iowa Rules of Civil Procedure.

7.5(5) Except as otherwise provided in these rules or ordered by the department, an original copy only of every pleading, brief, motion or petition shall be filed.

7.5(6) All copies shall be clear and legible but may be on any weight paper.

Upon motion of an opposing party or on its own, the department may, in its discretion, if a person or party has failed to comply with this rule, require such person or party to follow the provisions of this rule pointing out the defects and details needed to comply with the rule prior to filing.

701—7.6(17A) Persons authorized to practice before the department. Due to the complex questions involved and the technical aspects of taxation, persons are encouraged to seek the aid, advice, assistance and counsel of practicing attorneys and certified public accountants.

The right to practice before the department in connection with any proceeding shall be limited to the following classes of persons:

1. Taxpayers who are natural persons representing themselves.
2. Attorneys duly qualified and entitled to practice in the courts of the state of Iowa.

3. Attorneys who are entitled to practice before the highest court of record of any other state and who have complied with Iowa Supreme Court Rule 113.

4. Accountants who are authorized, permitted, or licensed under Iowa Code chapter 542C.

5. Duly authorized directors or officers of corporations representing the corporation of which they are respectively a director or officer, excluding attorneys who are acting in the capacity of a director or officer of a corporation and who have not met the requirements of the third classification above.

6. Partners representing their partnership.

7. Fiduciaries.

8. Government officials authorized by law.

9. Enrolled agents, currently enrolled under 31 CFR §10.6 for practice before the Internal Revenue Service, representing a taxpayer in proceedings under division II, Iowa Code chapter 422.

Any person appearing in any proceeding before the department on behalf of another must have on file with the department a power of attorney.

No person who has served as an official or employee of the department shall within a period of two years after the termination of such service or employment appear before the department or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and in which the person personally participated during the period of service or employment.

This rule is intended to implement Iowa Code chapter 17A.

701—7.7(17A) Resolution of tax liability. Unless a proper protest has been filed as provided hereinafter, persons interested in any tax liability, refund claim, licensing or any other tax matters shall discuss the resolution of such matters with appropriate personnel as designated by the billing.

In the event that a proper protest has been filed as provided hereinafter, the appropriate department personnel, when authorized by the review unit, shall have the authority to discuss the resolution of any matter in the protest either with the protester or the protester's representative. The appropriate personnel shall report their activities in this regard to the review unit and the unit shall be authorized to approve or reject any recommendations made by the appropriate personnel to resolve a protest.

This rule is intended to implement Iowa Code chapter 17A.

701—7.8(17A) Protests. Any person wishing to contest an assessment, denial of refund claim, or any other department action, except licensing, which may culminate in a contested case proceeding shall file a protest, in writing, with the department within the time prescribed by the applicable statute or rule for filing notice of application to the director for a hearing. The protest must be either delivered to the department by United States Postal Service, by ordinary, certified, or registered mail, directed to the attention of the administrative law judge, personally delivered to the office of the administrative law judge, or be served on the department by personal service during business hours. For the purpose of mailing, a protest is considered filed on the date of the postmark. It is considered filed the date personal service or personal delivery to the office of the administrative law judge is made. See Iowa Code section 622.105 for the evidence necessary to establish proof of mailing. The period for appealing agency action relating to refund claims is the same statutory period for contesting an assessment. For assessments issued before January 1, 1995, the time period for filing a protest to an assessment cannot be extended by filing a refund claim. Failure to timely file a written protest will be construed as a waiver of opposition to the matter involved unless on the director's own motion, pursuant to statutory authority, the power of abatement is exercised. The review unit may seek dismissal of protests which are not in the proper form as provided by this rule. See subrule 7.11(2) for dismissals.

CHAPTER 118
LOGO SIGNING

761—118.1(306C) Introduction. This chapter pertains to official signs that are located within the right-of-way of interstate and freeway primary highways and that give specific information of interest to the traveling public. The department shall control the erection and maintenance of these signs in accord with this chapter and the "Manual on Uniform Traffic Control Devices for Streets and Highways," as adopted in rule 761—130.1(321).

761—118.2(306C) Erection and location of specific service signs.

118.2(1) *General.*

a. The department shall erect specific service signs at rural interchanges if the requirements of this chapter are met and sufficient space is available. Specific service signs shall not be installed within suburban or urban areas, except where roadside development is rural in character.

b. Specific service signs shall be erected at an interchange only when the motorist can conveniently reenter the interstate or freeway primary highway and continue in the same direction of travel.

c. Specific service signs shall be located in a manner that takes advantage of the natural terrain and that has the least impact on the scenic environment.

118.2(2) *Mainline specific service signs.*

a. A maximum of four mainline specific service signs shall be installed in advance of an interchange. One mainline specific service sign shall be provided on the interchange approach for each type of motorist service (gas, food, lodging, camping and tourist attractions) if qualified services are available and minimum spacing requirements can be met. However:

(1) When space is limited or where no more than three qualified motorist services desire signing for each of two types of motorist services, business signs for these services may be displayed on the same mainline specific service sign. A combination sign may display no more than three business signs for each service.

(2) A "TOURIST ATTRACTIONS" mainline specific service sign shall be installed only in lieu of or in combination with another service.

b. Mainline specific service signs shall be erected between the previous interchange and 800 feet in advance of the exit direction sign for the interchange from which the services are available. There shall also be at least 800-foot spacing between the signs. In the direction of traffic, the successive signs shall be those for "TOURIST ATTRACTIONS," "CAMPING," "LODGING," "FOOD," and "GAS," in that order. If the spacing limitations prohibit the erection of specific service signs for all five types of services, preference shall be given to available "GAS," "FOOD," "LODGING," "CAMPING," or "TOURIST ATTRACTIONS" services, in that order.

118.2(3) *Ramp specific service signs.*

a. On a single-exit interchange where the advertised activities or the on-premise signing of individual business installations identified by business signs on the mainline specific service sign is not visible from the ramp terminal, a ramp specific service sign for the type of motorist service shall be erected. When the advertised activities or the on-premise signing is visible from the ramp terminal, a ramp specific service sign shall not be erected for that service.

b. If conditions permit, the successive panels along the ramp in the direction of traffic shall be those for "TOURIST ATTRACTIONS," "CAMPING," "LODGING," "FOOD," and "GAS," in that order. If conditions require sign installation other than successive signs along the ramp, preference shall be given to "GAS," "FOOD," "LODGING," "CAMPING," or "TOURIST ATTRACTIONS," in that order.

c. Ramp specific service signs shall not be erected on double-exit interchanges.

118.2(4) *Trailblazing signs.*

a. Trailblazing signs are small signs similar to ramp signs. They are erected on the road network ıccessed by way of a logo-signed interchange to direct motorists to a particular business installation, if he business is not located along the intersecting roadway.

b. Trailblazing signs are used only on non-fully controlled access highways. They are installed ›nly for business installations which are signed on the mainline.

c. The department shall install trailblazing signs on routes under its jurisdiction and shall make ;igns available for local jurisdictions to place on routes within their jurisdictions. The department shall nstall mainline, ramp and trailblazing signs under its jurisdiction only after the local jurisdiction has ›laced the required trailblazing signs on local routes. If a local jurisdiction declines to install required railblazing signs within its jurisdiction, the business does not qualify for logo signing.

d. No more than two trailblazing signs shall be erected for a business. If more than two trailblazng signs are required to guide motorists to the business, the business does not qualify for logo signing.

'61—118.3(306C) Placement of business signs on specific service signs.

118.3(1) *Mainline specific service signs.* A "GAS," "FOOD," "LODGING," "CAMPING," or 'TOURIST ATTRACTIONS" mainline specific service sign shall display a maximum of six individu-ıl business signs.

118.3(2) *Ramp specific service signs.* A "GAS," "FOOD," "LODGING," "CAMPING," or 'TOURIST ATTRACTIONS" ramp specific service sign shall display a maximum of six individual ›usiness signs.

'61—118.4(306C) Eligibility for placement of business signs on mainline specific service signs. To qualify for placement of a business sign on a mainline specific service sign, the individual business nstallation must meet the following requirements:

118.4(1) *Written assurance.* The individual business installation whose name, symbol, or tradenark is to appear on a business sign shall give the department written assurance of its conformity with ıll applicable laws concerning the provision of public accommodations without regard to race, eligion, color, age, sex or national origin, and shall not be in continuing breach of that assurance.

118.4(2) *Maximum distance.*

a. The maximum distance that the "GAS," "FOOD," "LODGING," "CAMPING," or "TOURST ATTRACTIONS" services may be located from the main traveled way to qualify for a business ;ign shall not exceed three miles in either direction; however, if within the three-mile limit services of he type being considered are not available, the limit of eligibility may be extended in three-mile increnents until services of the type being considered, or 15 miles, is reached. The distance shall be meaıured from the beginning of the exit ramp.

b. In urban areas where the number of qualifying applicants for any service exceeds eight, the lepartment may reduce the maximum travel distance to one mile for that service.

118.4(3) *Gas.* To qualify for placement of a business sign on a "GAS" specific service sign, the ndividual business installation must:

a. Be appropriately licensed as required by law.

b. Provide vehicle services such as fuel, oil, and water.

c. Provide free air for tire inflation.

d. Provide rest room facilities and drinking water.

e. Operate year-round at least 12 continuous hours per day, 7 days a week.

f. Provide a public telephone.

118.4(4) *Food.* To qualify for placement of a business sign on a "FOOD" specific service sign, the ndividual business installation must:

a. Be appropriately licensed as required by law.

b. Operate year-round six days a week, and serve three meals a day (breakfast, lunch, and dinner). In situations where a vacant space is available and no fully qualifying businesses have applied, the department may grant an exception to the three-meal-a-day requirement. A business signed under this procedure shall be bumped by a fully qualifying business applicant after the business has had five years to amortize the cost of its signs. If there are more businesses qualifying for this exception than spaces available, a drawing shall be held as provided in subrule 118.5(4).

c. Provide a public telephone.

118.4(5) *Lodging.* To qualify for placement of a business sign on a "LODGING" specific service sign, the individual business installation must:

a. Be appropriately licensed as required by law.

b. Provide adequate sleeping accommodations consisting of a minimum of ten units each. Each unit must have a bathroom and a sleeping room. EXCEPTION: A bed and breakfast establishment is not required to have more than two guest rooms or provide separate bathroom facilities for each room.

c. Provide a public telephone.

118.4(6) *Camping.* To qualify for placement of a business sign on a "CAMPING" specific service sign, the individual business installation must:

a. Meet applicable state and local standards for health and sanitation.

b. Agree to the removal or masking of the business sign by the department during off-seasons, if operated on a seasonal basis.

c. Provide a public telephone.

118.4(7) *Tourist attractions.* To qualify for placement of a business sign on a "TOURIST ATTRACTION" specific service sign, the individual site or attraction must:

a. Be an activity or location that is nationally or regionally known and is one or more of the following:

(1) Natural phenomena.
(2) Historic site.
(3) Cultural site.
(4) Scientific site.
(5) Educational site.
(6) Religious site.
(7) Area of natural beauty.
(8) Area naturally suited for outdoor recreation.

b. Maintain regular hours for that type of establishment.

c. Be appropriately licensed as required by law.

d. Have restroom facilities available for use by the traveling public.

e. Have drinking water available for the traveling public.

f. Have an on-premise or nearby public telephone available for use by the traveling public.

g. Have adequate parking to accommodate its traffic with a minimum of ten spaces.

118.4(8) *Compliance with Iowa Code sections 306C.11 and 306C.13.* The individual business installation must be in compliance with Iowa Code sections 306C.11 and 306C.13. If an advertising device which serves a business is erected or maintained in violation of either of these sections, that business shall be disqualified from obtaining or maintaining a business sign upon any specific service sign.

761—118.5(306C) Application and fees.

118.5(1) *Application.*

a. An individual business installation requesting placement of a business sign upon a mainline specific service sign shall submit a completed application form, provided by the department, to the Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. When the advertised activity or on-premise signing of the business installation is not visible from the ramp terminal and a ramp specific service sign has been erected, application shall be made for space on the ramp specific service sign in addition to application for space on the mainline specific service sign. If the business installation is not located along the intersecting route, application must also be made for trailblazing signs. Application for ramp and trailblazing signs is made through the original logo application.

c. If the application is approved, the applicant shall remit the required fees and furnish the department with business sign(s) meeting department specifications.

118.5(2) *Applications for tourist attraction signing.* The department shall submit applications from tourist attractions to the tourist signing committee. The tourist signing committee will determine whether the applications meet the qualifications of a tourist attraction. The composition of the committee is set out in 761—subrule 119.5(3).

118.5(3) *Fees.* The individual business installation shall pay to the department an annual fee of $50 plus $15 per month for each business sign supplied for posting. The monthly fee shall be due on or before the first day of each month or payable quarterly with installments due on or before July 1, October 1, January 1, and April 1 of each year. The annual fee shall be due upon approval of the application, and on or before July 1 of each year thereafter. Failure to submit fees by these dates shall be cause for removal and disposition of the affected business sign(s) by the department.

118.5(4) *Drawing to allocate space.* If the number of qualified applicants is greater than the number of available spaces on a mainline specific service sign, the department shall hold a drawing among the qualified applicants to select the applicants who will fill any vacant spaces.

761—118.6(306C) Business sign specifications. A business sign shall be a blue sign with a white border and white legend, except that colors consistent with customary use should be used with nationally, regionally, or locally known symbols or trademarks. Reflectorization of business signs is optional, at the discretion of the applicant.

118.6(1) *Mainline business signs.* On mainline business signs, all letters in the principal legend shall be at least 10 inches high, whether capital or lowercase. However, when the symbol or trademark is used alone for the business sign, any legend on it shall be proportional to the size customarily used on the symbol or trademark. The symbol or trademark may also be modified to improve legibility. Supplemental information such as "open 24 hours," "diesel," or "mechanic on duty" may be added to the business sign with prior written approval by the department. This supplemental information shall be displayed using 6-inch letters.

a. A "GAS" mainline business sign shall be contained within a 48-inch wide and 36-inch high rectangular panel.

b. A "FOOD," "LODGING," "CAMPING" or "TOURIST ATTRACTIONS" mainline business sign shall be contained within a 60-inch wide and 36-inch high rectangular panel.

118.6(2) *Ramp business signs.* On ramp business signs, all letters in the principal legend shall be at least 4 inches high, whether capital or lowercase. However, when the symbol or trademark is used alone for the business sign, any legend on it shall be proportional to the size customarily used on the symbol or trademark. The symbol or trademark may also be modified to improve legibility.

a. A "GAS" ramp business sign shall be contained within a 24-inch wide and 16-inch high rectangular panel.

b. A "FOOD," "LODGING," "CAMPING" or "TOURIST ATTRACTIONS" ramp business sign shall be contained within a 36-inch wide and 16-inch high rectangular panel.

118.6(3) *Trailblazing business signs.* On trailblazing business signs, all letters in the principal legend shall be at least 4 inches high, whether capital or lowercase. However, when the symbol or trademark is used alone for the business sign, any legend on it shall be proportional to size customarily used on the symbol or trademark. The symbol or trademark may also be modified to improve legibility. All trailblazing business signs shall be contained within a 20-inch wide and 12-inch high rectangular panel.

761—118.7(306C) Installation, maintenance, removal and replacement of business signs.

118.7(1) The department shall perform all required installation, maintenance, removal and replacement of business signs upon specific service signs within the right-of-way.

118.7(2) Ordinary initial installation and maintenance services shall be performed by the department during the month of July upon payment of the annual renewal fee.

118.7(3) The department may perform additional requested services in connection with modification of a business sign upon payment of a $50 service charge. Any required new or renovated business sign shall be provided by the applicant.

118.7(4) The department shall remove and dispose of a business sign if the applicant fails to pay the required fees or if the applicant or business sign violates any provision of these rules.

118.7(5) No business sign shall be displayed which would mislead or misinform the traveling public, or which is unsightly, badly faded, or dilapidated. The department may remove, replace, or mask business signs which violate these provisions.

118.7(6) Messages, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or device are prohibited.

118.7(7) The department shall not be responsible for damages to business signs caused by vandalism or natural causes. If a business sign is so damaged and it requires repair or replacement, the applicant shall provide a renovated or new business sign along with payment of a $50 service charge to the department for replacement of the damaged business sign.

761—118.8(306C) Tourist attraction signing. Tourist attractions may be signed if allowed by the "Manual on Uniform Traffic Control Devices for Streets and Highways" or approved by the Federal Highway Administration.

These rules are intended to implement Iowa Code section 306C.11.

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761—400.53(321) Stickers.

400.53(1) *Placement of validation sticker.* The validation sticker shall be affixed to the lower left corner of the rear registration plate. EXCEPTION: For motorcycle and small trailer plates, the validation sticker shall be affixed to the upper left corner of the plate.

400.53(2) *Special fuel user identification sticker.* If the vehicle uses a special fuel as defined in subrule 400.1(15) of this chapter, a special fuel user identification sticker shall be issued. This sticker shall be displayed on the cover of the fuel inlet of the motor vehicle or on the outside panel of the motor vehicle within 3 inches of the fuel inlet so as to be in view when fuel is delivered into the motor vehicle.

400.53(3) *Persons with disabilities parking sticker.* A persons with disabilities special registration plate parking sticker shall be affixed to the lower right corner of the rear registration plate.

This rule is intended to implement Iowa Code sections 321.34, 321.40, 321.41, and 321.166.

761—400.54(321) Registration card issued for trailer-type vehicles. The registration card issued for trailer-type vehicles shall be carried in the vehicle which is described on the card or the registration card may be carried in the driver's compartment of the towing vehicle. If the registration card is carried in the vehicle which is described on such card, the registration card shall be enclosed in a registration card holder and the holder shall be attached to the vehicle so that the registration card may be viewed by any peace officer upon request.

This rule is intended to implement Iowa Code section 321.32.

761—400.55(321) Damage disclosure statement.

400.55(1) Pursuant to Iowa Code section 321.69, a damage disclosure statement shall be submitted with an application for certificate of title for a motor vehicle. The damage disclosure statement in the assignment/reassignment area on the back of the title shall be used. However, if this is not available or if a separate disclosure document is required, the damage disclosure statement shall be made on a separate form approved by the department for this purpose.

400.55(2) If the transferor failed to provide a damage disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts. The transferee shall also complete section 1, question 2, of a separate disclosure document, Form No. 411108, and sign on the buyer's line. The sworn statement and disclosure document completed by the transferee shall be accepted by the county treasurer or the department in lieu of the damage disclosure statement required from the transferor.

400.55(3) Any damage disclosed by a damage disclosure statement shall be rounded to the nearest whole dollar when recorded on the face of the title.

400.55(4) The county treasurer shall retain the damage disclosure statement for the life of the title.

400.55(5) A model year formula for damage disclosure statements shall be the current year minus ten. The resulting number represents the first model year for which a motor vehicle is exempt from the damage disclosure statement requirements incident to a transfer.

This rule is intended to implement Iowa Code section 321.69.

761—400.56(321) Hearings. A person whose certificate of title, vehicle registration, license, or permit has been revoked, suspended, canceled, or denied may contest the decision under Iowa Code chapter 17A and rules 761—Chapter 13, Iowa Administrative Code. The request shall be submitted in writing to the director of the office of vehicle services at the address in subrule 400.6(1).

This rule is intended to implement Iowa Code sections 17A.10 to 17A.19, 321.101 and 321.102.

761—400.57(321) Non-resident-owned vehicles. When the primary users of a non-resident-owned vehicle are not located in Iowa, the vehicle may be registered by the county treasurer of any county in this state. The primary users of the non-resident-owned vehicle shall provide the county treasurer with the address of the users, if different from the address of the nonresident owner. This rule shall not apply to vehicles registered under Iowa Code chapter 326.

This rule is intended to implement Iowa Code section 321.20.

761—400.58(321) Motorized bicycles. The following rules shall apply to motorized bicycles.

400.58(1) *Maximum speed.* If the department has reasonable cause to believe that a particular vehicle or model is capable of speeds exceeding 25 miles per hour, the department may conduct independent tests to determine the maximum speed of the vehicle or model. If the department determines that the maximum speed of the particular vehicle or model exceeds 25 miles per hour, the vehicle or model shall not be registered as a motorized bicycle.

400.58(2) *Identification of a vehicle as a motorized bicycle.* Registration plates issued for motorcycles shall also be issued for motorized bicycles.

This rule is intended to implement Iowa Code section 321.1.

761—400.59(321) Registration documents lost or damaged in transit through the United States postal service. To obtain without cost the reissuance of registration documents that were sent by the county treasurer to the owner through the United States postal service and which were lost or damaged in transit, the owner of the vehicle shall file application for reissuance within 60 days of the date the documents were issued by the county treasurer.

This rule is intended to implement Iowa Code section 321.42.

761—400.60(321) Credit of registration fees.

400.60(1) *Credit for unexpired registration fee.* The applicant may claim credit, as specified in Iowa Code subsection 321.46(3); toward the registration fee for one newly acquired replacement vehicle.

a. On the reverse side of the application form, the applicant shall indicate if any credit is due; if no credit is due, the applicant shall write "none."

b. The credit may be claimed only when the owner of the newly acquired vehicle is applying for a certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) for the newly acquired vehicle.

c. The registration receipt for the formerly owned or junked vehicle shall be submitted with the application form. If applicable, the registration receipt shall be completed on the reverse side to show the transfer of ownership. If the registration receipt has been lost and if the applicant has traded the formerly owned vehicle to a dealer and purchased a replacement vehicle from that dealer, the dealer may obtain a replacement registration receipt from the dealer's county treasurer. If a titled vehicle has been junked by the vehicle's owner, the junking certificate issued under Iowa Code section 321.52 shall also be submitted.

(1) The date on the reverse side of the registration receipt or on the junking certificate shall determine the date the vehicle was transferred or junked.

(2) If the sold or junked vehicle was a trailer not subject to titling, the owner may obtain a free duplicate registration receipt from the county treasurer for the purpose of claiming credit.

d. Excess credit shall not be applied toward the registration fee for a second vehicle.

e. Credit shall be allowed for one or two vehicles which have been sold, traded or junked toward one replacement vehicle. Credit shall be based on the remaining unexpired months of the registration year(s) of the vehicle(s) sold, traded or junked.

b. A written statement from the peace officer listing the plate number of the registration plate removed from the vehicle and the vehicle owner's name. The statement must either reference Iowa Code subparagraph 321.20B(4)"*a*"(3) or 321.20B(4)"*a*"(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded. The statement must be signed by the peace officer or an employee of the law enforcement agency.

400.70(2) The peace officer may either destroy removed plates or deliver the removed plates to the county treasurer for destruction.

This rule is intended to implement Iowa Code section 321.20B and 1998 Iowa Acts, chapter 1121, section 2.

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CHAPTER 43
PETITIONS FOR RULE MAKING

[Prior to 3/12/97 see Employment Services[341] Ch 3]

871—43.1(17A,84A) Petition for rule making. Any person may file a petition for rule making with the agency at 1000 East Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	)))	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner, including the text or a summary of the contents of the proposed rule or amendment to a rule, and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 43.4(17A,84A).

43.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

43.1(2) The agency may deny a petition because it does not substantially conform to the required form.

871—43.2(17A,84A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

871—43.3(17A,84A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the director of the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

871—43.4(17A,84A) Agency consideration.

43.4(1) Within 14 days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

43.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

43.4(3) Denial of petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

871—43.5(17A) Criticism of agency rule. The Division Administrator of the Division of Unemployment Insurance Services, Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319, is designated as the office where interested persons may submit criticism by mail regarding a rule of the workforce development department, Iowa Administrative Code. A criticism of a specific rule must be more than a mere lack of understanding or a dislike of a rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, be signed by the complainant, not be part of any other filing with the department of workforce development, and have a rational basis. All requests for criticism received on any rule will be kept in a separate record for a period of five years by the decision of unemployment insurance services and be a public record open for public inspection. All requests for criticism must be in the following format:

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF UNEMPLOYMENT INSURANCE SERVICES

(NAME OF PERSON SUBMITTING CRITICISM).	}	CRITICISM OF (SPECIFY RULE THAT IS UNDER CRITICISM).

Name, address, telephone number and signature of person submitting the criticism.
Reasons for criticism:

These rules are intended to implement Iowa Code chapter 84A and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 44
DECLARATORY ORDERS

[Prior to 3/12/97 see Employment Services[341] Ch 4]

871—44.1(17A) Petition for declaratory order. Any person may file a petition with the agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department of workforce development at 1000 East Grand Avenue, Des Moines, Iowa 50319. If the petition deals with a statute within the express jurisdiction of one of the divisions, it shall be forwarded to that division for determination. Service of petitions for district court review of all agency decisions, rulings and actions (where such service is required by Iowa Code chapter 17A) shall be made by the agency. Declaratory orders made by the divisions will be considered final rulings for the agency with regard to Iowa Code chapter 17A.

A petition is deemed filed when it is received by that office. The agency shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 44.4(17A,84A).

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

871—44.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons not served by the petitioner pursuant to rule 44.6(17A) to whom notice is required by any provision of law. The agency may also give notice to any other persons.

871—44.3(17A) Intervention.

44.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

44.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department of workforce development.

44.3(3) A petition for intervention shall be filed at 1000 East Grand Avenue, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The agency will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF WORKFORCE DEVELOPMENT

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

The petition for intervention must provide the following information:

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

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

871—44.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of workforce development may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

871—44.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the director of the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319.

871—44.6(17A) Service and filing of petitions and other papers.

44.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

44.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the director of the Department of Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department of workforce development.

44.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 871—26.11(17A,96).

871—44.7(17A) Consideration. Upon request by petitioner, the department of workforce development must schedule a brief and informal meeting between the original petitioner, all intervenors and a member of the staff of the department of workforce development to discuss the questions raised. The agency may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department of workforce development by any person.

871—44.8(17A) Action on petition.

44.8(1) Within the time allowed by Iowa Code section 17A.9(5) after receipt of a petition or a declaratory order, the director of the department of workforce development or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

44.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 877—26.2(17A,96).

871—44.9(17A) Refusal to issue order.

44.9(1) The department of workforce development shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

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

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

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

44.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

44.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue a ruling.

871—44.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

871—44.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

871—44.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department of workforce development, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department of workforce development. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 84A and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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LABOR SERVICES DIVISION[875]

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

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CHAPTER 1
DESCRIPTION OF ORGANIZATION AND PROCEDURES BEFORE THE DIVISION

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

DIVISION I
ADMINISTRATION

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

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

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

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

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

875—1.4 to 1.10 Reserved.

DIVISION II
OPEN RECORDS AND FAIR INFORMATION PRACTICES

875—1.11(22,91) General provisions.

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

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

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

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

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

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

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

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

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

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

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

1.11(4) *Definitions.*

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

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

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

"Division" means the division of labor services.

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

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

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

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

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

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

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

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

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

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

b. Retrieving a record from archival storage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

875—1.24 to 1.30 Reserved.

DIVISION III
RULE-MAKING PROCEDURES

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

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

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

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

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

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

a. The subject matter of the proposed rule;

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

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

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

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

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

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

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

i. The date of the rule's adoption;

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

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

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

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

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

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

b. The specific legal authority for the proposed rule;

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

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

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

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

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

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

875—1.35(17A) Public participation.

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

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

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

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

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

1.35(3) *Conduct of oral proceedings.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

875—1.36(17A) Regulatory analysis.

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

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

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

b. Its address;

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

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

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

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

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

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

a. The administrative rules coordinator;

b. The administrative rules review committee.

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

a. The administrative rules review committee;

b. The administrative rules coordinator;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The reasons for adopting the rule;

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

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

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

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

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

a. The date the division adopted the rule;

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

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

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

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

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

g. The effective date of the rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

875—1.48 and **1.49** Reserved.

DIVISION IV
DECLARATORY ORDERS

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

DIVISION OF LABOR SERVICES

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

The petition must provide the following information:

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

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

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

875—1.52(17A) Intervention.

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

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

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

DIVISION OF LABOR SERVICES

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

The petition for intervention must provide the following information:

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

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

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

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

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

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

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

1.55(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 875—1.76(17A).

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

875—1.57(17A) Action on petition.

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

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

875—1.58(17A) Refusal to issue order.

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

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

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

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

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

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

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

A declaratory order is effective on the date of issuance.

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

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

875—1.62 to **1.64** Reserved.

DIVISION V
CONTESTED CASES

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

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

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

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

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

"Presiding officer" means the labor commissioner or designee.

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

875—1.67(17A) Time requirements.

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

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

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

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

875—1.69(17A) Notice of hearing.

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

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

b. Certified mail, return receipt requested;

c. First-class mail;

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

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

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

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

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

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

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

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

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

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

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

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

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

875—1.70(17A) Presiding officer.

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

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

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

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

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

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

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

f. The request was not timely filed.

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

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

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

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

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

875—1.72(17A) Disqualification.

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

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

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

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

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

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

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

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

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

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

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

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

875—1.73(17A) Consolidation—severance.

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

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

875—1.74(17A) Answer.

1.74(1) *Answer.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

875—1.76(17A) Discovery.

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

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

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

875—1.77(17A) Subpoenas.

1.77(1) *Issuance.*

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

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

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

875—1.78(17A) Motions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

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

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

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

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

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

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

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

b. State the specific reasons for the request; and

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

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

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

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

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

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

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

875—1.82(17A) Intervention.

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

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

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

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

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

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

875—1.83(17A) Hearing procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

875—1.84(17A) Evidence.

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

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

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

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

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

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

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

875—1.85(17A) Default.

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

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

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

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

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

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

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

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

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

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

875—1.86(17A) Ex parte communication.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

875—1.91(17A) Appeals and review.

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

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

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

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

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

d. The relief sought; and

e. The grounds for relief.

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

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

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

875—1.92(17A) Applications for rehearing.

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

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

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

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

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

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

1.93(1) *When available.*

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

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

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

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

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

875—1.95(17A) Emergency adjudicative proceedings.

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

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

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

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

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

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

1.95(2) *Issuance of order.*

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

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

(1) Personal delivery;

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

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

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

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

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

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

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

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

875—1.96 to **1.98** Reserved.

DIVISION VI
INTEREST, FEES AND CHARGES

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

These rules are intended to implement Iowa Code chapters 17A, 22 and 91.

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875—150.6(91C) Fee.

150.6(1) *Application.* Each application shall be accompanied by a biennial fee of $25. A fee is not required where a permissible amendment to an application is requested.

150.6(2) *Exemption from fee.* A contractor shall not be required to pay the fee if the application contains an affidavit which shows the contractor is self-employed, does not pay more than $1,000 annually to employ other persons in the business, and does not work with or for other contractors in the same phase of construction. At any time that a contractor no longer meets the provision for an exemption from the fee, the fee shall be paid to the division.

150.6(3) *Application attachment.* To apply for a fee exemption, the contractor shall attach to the application an affidavit which contains:

a. A statement that the contractor is self-employed;

b. A list of all employees employed in the past 12-month period and the amount paid to each employee; and

c. A list of all current employees.

875—150.7(91C) Registration number issuance. Within 30 days of receipt of a completed application, the commissioner will issue to the contractor a public registration number. The registration number will be a five-digit number followed by a two-digit number indicating the year of issuance.

875—150.8(91C) Workers' compensation insurance cancellation notifications.

150.8(1) *Insurance company coverage.* The division shall be notified by the insurance company carrying the contractor's workers' compensation insurance at the time of cancellation. The notice shall contain:

a. The name of the insurance carrier;

b. The name of the insured contractor; and

c. The date the workers' compensation coverage cancellation is effective.

150.8(2) *Self-insured contractors.* The contractor shall notify the division ten days prior to any cessation in self-insurance.

150.8(3) *Noninsured contractors.* The contractor shall notify the division whenever the required notice is not posted or in any change in insurance status.

875—150.9(91C) Investigations and complaints.

150.9(1) *Investigations.* Investigations may take many forms to determine if there is compliance with the law. Investigations shall take place at the times and in the places as the commissioner may direct. The commissioner may interview persons at the work site and utilize other reasonable investigatory techniques. The conduct of the investigation shall be such as to preclude unreasonable disruption of the operations of the work site. Investigations may be conducted without prior notice by correspondence, telephone conversations, or review of materials submitted to the division. At the initiation of an investigation at the contractor's establishment, the investigator shall present credentials, explain the nature and purpose of the investigation, and seek the consent of the owner, operator or agent in charge of the establishment. In the event the investigator is not permitted to fully conduct an investigation, the commissioner may seek an administrative warrant, if necessary.

150.9(2) *Complaints.* Complaints in which the complainant provides a name and address made to the commissioner in writing shall receive a written response as to the results of the investigation. A complainant's name and other identifying information shall not be released if the complaint was included as a part of another complaint where the complainant's identity would be protected under other statutes or rules (i.e., a complaint filed under both Iowa Code chapters 88 and 91C).

875—150.10(91C) Citations/penalties and appeal hearings.

150.10(1) *Citations.* The commissioner shall issue a citation to a contractor where an investigation reveals the contractor has violated:

a. The requirement that the contractor be registered;

b. The requirement that the contractor's registration information be substantially complete and accurate; or

c. The requirement that an out-of-state contractor file a bond with the division.

150.10(2) *Penalties.* If a citation is issued, the commissioner shall notify the contractor by certified mail of the proposed administrative penalty, if any. The administrative penalties shall be not more than $500 in the case of the first violation and not more than $5,000 per violation in the case of a second or subsequent violation. In proposing a penalty, due consideration will be given to knowledge of the alleged violation, knowledge of requirements of the law, and nature and extent of the alleged violation.

150.10(3) *Appeal.* The contractor shall have 15 working days within which to file a notice of contest of the citation or proposed penalty. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.10(4) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to administrative hearings on citations and penalties.

875—150.11(91C) Revocation of registrations and appeal hearings.

150.11(1) *Reason for revocation.* The commissioner shall seek revocation of a contractor's registration where an investigation reveals the contractor failed to meet the conditions of registration at the time of issuance or no longer meets the conditions.

150.11(2) *Notice of revocation.* The commissioner shall serve a notice of intent to revoke on the contractor by personal service or by restricted certified mail to the address listed in the application or by other service as permitted in the Iowa Rules of Civil Procedure. The notice shall set the time for a fact-finding hearing conducted in accordance with Iowa Code chapter 17A.

150.11(3) *Hearing.* The purpose of the fact-finding hearing is to ensure the contractor is not in compliance before the registration is revoked. All hearings shall be held in the offices of the division. A telephone interview may be conducted upon request.

150.11(4) *Hearing procedures.* Administrative hearing rules at 875—Chapter 1 shall be applicable to the fact-finding hearings.

150.11(5) *Decision.* The commissioner shall serve the decision on the contractor by certified mail to the address listed on the application or to another address provided by the contractor. If the certified mail is returned unclaimed or undelivered, the commissioner shall send the decision to the address by first-class mail.

150.11(6) *Effective date of revocation.* Revocations shall become effective 21 days after certified mailing of the decision.

150.11(7) *Suspension.* The division and the commissioner find the public health, safety or welfare imperatively requires emergency action where a construction contractor fails to maintain compliance with the laws of this state relating to workers' compensation as required in subrule 150.4(6) due to the financial impact upon the public and any worker who might be injured. Therefore, a construction contractor's registration may be suspended effective upon issuance of the subrule 150.11(2) notice of revocation. Upon application showing good cause and proof of compliance with the workers' compensation laws as required in subrule 150.4(6), the commissioner may alter the finding and temporarily reinstate a registration number pending hearing on the revocation. In cases of suspension pending a revocation hearing, the hearing shall be instituted and determined promptly.

150.11(8) *Appeal.* The contractor shall have 15 working days from receipt of the decision issued pursuant to subrule 150.11(5) to file a notice of contest of decision. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.11(9) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to appealed decisions.

150.11(10) *Effect of revocation.* A contractor whose registration is revoked may reapply for a new registration number if all requirements for registration eligibility are met.

875—150.12(91C) Concurrent actions. Actions under rules 875—150.10(91C) and 150.11(91C) may proceed at the same time against a contractor.

875—150.13(91C) Out-of-state contractor bonds.

150.13(1) *Project size.* Before commencing a contract for a project in Iowa with a contract price in excess of $5,000 in value, an out-of-state contractor shall file a valid original project or blanket surety bond with the division.

150.13(2) *Information.* The division bond forms shall be used. The bond shall include the identification of the contractor including the name and address, and a valid power of attorney from the surety company shall be attached. If the Iowa construction contractor registration number has been issued, it shall be included on the bond.

150.13(3) *Surety company.* The bond shall be executed by a surety company authorized to do business in this state.

150.13(4) *Time.* The bond shall be continuous in nature until canceled by the surety or for the two-year registration period in the case of a blanket bond.

150.13(5) *Cancellation.* The surety shall give the commissioner and the contractor 30 days' written notice indicating the desire to cancel the bond.

150.13(6) *Federal preemption.* Rules 875—150.13(91C) to 150.15(91C) shall be suspended to the extent necessary to prevent any inconsistency with the requirements of federal law or to prevent the denial of federal funds. In addition, contractors performing work undertaken on a federal aid project shall submit to the division a letter of legal justification for the suspension or a letter from the contracting agency that the requirements of this rule are inconsistent with the federal requirements.

875—150.14(91C) Project bonds.

150.14(1) *Information.* In addition to the requirements in subrule 150.13(2), the following shall be included on the bond:

a. The name of the person for whom the construction work will be performed; and

b. The identification of the contract including the project name, contract number or identification, address where the work will be performed and a copy of the contract.

150.14(2) *Amount.* The bond shall be in the amount of $1000 or 5 percent of the contract price, whichever is greater. A separate bond is required for each contract. An increase in the bond may be required by the department of revenue and finance pursuant to Iowa Code chapter 91C.

875—150.15(91C) Blanket bonds. A blanket bond shall be in an amount not less than $50,000. The commissioner may increase the bond after a hearing conducted pursuant to 875—Chapter 1.

875—150.16(91C) Bond release.

150.16(1) *Notifications.* Prior to releasing a bond, the commissioner will notify the department of revenue and finance, the unemployment insurance services division of the workforce development department, and applicable state subdivisions of the intent to release the bond. The commissioner shall provide ten days for the filing of objections to the release of the bond. The commissioner may deem any failure to respond to the notice within the time provided as an approval of the release.

150.16(2) *Conditions for release.* A bond shall not be released until the contractor has made payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and fees, which may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract or approval for the release is obtained from the appropriate agencies.

These rules are intended to implement Iowa Code chapter 91C.

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CHAPTERS 151 to 159
Reserved

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◊Two ARCs

CHAPTER 202
SPECIAL INSPECTORS
[Prior to 1/14/98, see 347—Chs 41 to 49]

875—202.1(89) Commission. A special inspector shall obtain a commission from the labor commissioner. A commission shall be granted only to those persons holding a commission from the National Board. The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. A person applying for a commission shall complete, sign, and submit to the division with the required fee the form entitled "Special Inspector Commission Application Boiler and Pressure Vessel Inspector" provided by the division. The special inspector shall notify the division at the time any of the information on the form or attachments changes. Additionally, the applicant shall submit a copy of the applicant's National Board Inspectors Commission with an initial application and a copy of the applicant's current National Board work card with each application. Each commission shall expire no later than June 30 of each year.

875—202.2(89) Denials. The labor commissioner may refuse to issue or renew a special inspector's commission for failure to complete an application package or for any reason listed in rules 202.4(89) to 202.6(89).

875—202.3(89) Investigations. Investigations shall take place at the time and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

875—202.4(89) Reasons for probation. The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals the special inspector filed inaccurate reports.

875—202.5(89,252J) Reasons for suspension. The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals the following:

1. The special inspector failed to submit and report inspections on a timely basis;
2. The special inspector abused special inspector's authority;
3. The special inspector misrepresented self as a state inspector or a state employee;
4. The special inspector used commission authority for inappropriate personal gain;
5. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;
6. The special inspector committed numerous violations as described in rule 202.4(89);
7. The special inspector used fraud or deception to obtain or retain, or attempt to obtain or retain, a special inspector commission whether for one's self or another;
8. The National Board revoked or suspended the special inspector's work card;
9. The division received a certificate of noncompliance; or
10. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs "1" to "8" of this rule.

875—202.6(89,252J) Reasons for revocation. The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

1. The special inspector filed a misleading, false or fraudulent report;
2. The special inspector failed to perform a required inspection;
3. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;
4. The special inspector failed to notify the division in writing of any accident involving an object;
5. The special inspector committed repeated violations as described in rule 202.5(89,252J);
6. The special inspector used fraud or deception to obtain or retain, or attempt to obtain or retain, a special inspector commission whether for one's self or another;
7. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs "1" to "6" of this rule;
8. The National Board revoked or suspended the special inspector's work card; or
9. The division received a certificate of noncompliance.

875—202.7(89) Notice of actions. The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A. A copy shall be sent to the insurance company employing the special inspector.

875—202.8(89) Contested cases. The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

875—202.9(89) Hearing procedures. The hearing procedures in 875—Chapter 1 shall govern.

875—202.10(89) Emergency suspension. Pursuant to Iowa Code section 17A.18(3), if the labor commissioner finds that public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or regulations, the special inspector's commission may be summarily suspended.

875—202.11(89) Probation period. A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

875—202.12(89) Suspension period. A special inspector's commission may be suspended up to five years for each incident causing a suspension.

875—202.13(89) Revocation period. A special inspector's commission which has been revoked shall not be reinstated for five years.

875—202.14(89,252J) Certificates of noncompliance. Rules 202.8(89) through 202.13(89) shall not apply in the event of revocation or suspension due to receipt of a certificate of noncompliance, and the procedures of Iowa Code section 252J.8 shall apply.

875—202.15(89) Concurrent actions. Multiple actions under rules 202.3(89) to 202.7(89) or 202.14(89,252J) may proceed at the same time against any special inspector.

These rules are intended to implement Iowa Code chapters 17A, 89, and 252J.

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220.222(3) Sleep time can be excluded from compensable hours of work, however, in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude the time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least 5 hours), the entire time must be counted as hours of work.

SOURCE: 29 CFR 553.222.

875—220.223(91D) Meal time.

220.223(1) If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with the federal Fair Labor Standards Act, 29 U.S.C. 207(a)(1), the public agency may exclude meal time from hours worked if all the tests in 29 CFR 785.19 are met.

220.223(2) If a public agency elects to use the federal Fair Labor Standards Act, 29 U.S.C. 207(f) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the employee is completely relieved from duty during the meal period and all the other tests in 29 CFR 785.19 are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., "stakeouts"), they are not considered to be completely relieved from duty, and any meal periods would be compensable.

220.223(3) Where the public agency elects to use the federal Fair Labor Standards Act, 29 U.S.C. 207(k), exemption for firefighters, meal time cannot be excluded from the compensable hours of work where:

a. The firefighter is on a tour of duty of less than 24 hours, and

b. Where the firefighter is on a tour of duty of exactly 24 hours.

220.223(4) In the case of police officers or firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the tests in 29 CFR 785.19 and 785.22 are met.

SOURCE: 29 CFR 553.223.

875—220.224 Reserved.

875—220.225(91D) Early relief. It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under federal Fair Labor Standards Act, 29 U.S.C. 207(k), where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. Alternatively, if the practice is required by the employer, the time involved must be added to the employee's tour of duty and treated as compensable hours of work.

SOURCE: 29 CFR 553.225.

875—220.226(91D) Training time.

220.226(1) The general rules for determining the compensability of training time under the federal Fair Labor Standards Act are set forth in 29 CFR 785.27 through 785.32.

220.226(2) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of governments in required training is considered to be noncompensable:

a. Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

b. Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government, does not constitute compensable hours of work.

c. Time spent in the training described in 220.226(1)*"a"* or *"b"* is not compensable, even if all or part of the cost of the training is borne by the employer.

220.226(3) Police officers or firefighters, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. The free time is not compensable.

SOURCE: 29 CFR 553.226.

875—220.227 to **220.233** Reserved.

These rules are intended to implement Iowa Code chapter 91D.

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CHAPTERS 221 to 299
Reserved

CHAPTER 300
ADMINISTRATIVE HEARINGS
[Prior to 11/29/89, see 347—Chapter 200]
[Prior to 11/4/98, see 347—Ch 300]
Rescinded IAB 6/2/99, effective 7/1/99

LIVESTOCK (cont'd)

Disease

LIVESTOCK (cont'd)
Swine

LOTTERY DIVISION (cont'd)
Games