

ITEM 1. Renumber rule **481—365.5(89A)** as **481—365.7(89A)**.

ITE 2. Adopt the following **new** rule 481—365.5(17A,89A):

481-365.5 (17A,89A) Procedures for Waivers in Addition to 7— Chapter 2504

365.5(1) *Filing petition.* A petition is deemed filed when it is received in the board's office.

The petition shall include the state identification number of the conveyance and the age of the conveyance. A petition should be sent to the Elevator Safety Board, Department of Inspections, Appeals, and Licensing, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. The petitioner shall submit the petition and all related materials for consideration at least three weeks prior to a scheduled board meeting for board review of the petition at the meeting.

365.5(2) *Waiver form.* Waiver applicants shall use the board's petition for waiver form. The board may request additional information from the petitioner.

365.5(3) *Posting of orders granting waivers.* The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the machine room corresponding to the conveyance. The order or a copy of the order granting a waiver that relates to a conveyance that does not have a machine room shall be posted in a protective sleeve attached to the inside of the controller cabinet door corresponding to the conveyance.

365.5(4) *Violations.* Violation of a condition in a waiver order will be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

ITEM 3. Adopt the following **new** rule 481-365.6 (17A, 89A)

481-365.6 (17A,89A) Procedures for Contested Cases in Addition to 7—Chapter 2506

365.6(1) *Reconsideration of inspection report.* The owner or operator of a piece of equipment subject to a written inspection report may petition the director for reconsideration of the report within 30 days of the issuance of the report. Failure to seek timely reconsideration

of the inspection report is a waiver of all appeal rights. The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and codes adopted by reference rests upon the petitioning owner or operator.

a. A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's website. A petition for reconsideration specifies:

- (1) The party seeking reconsideration, including mailing address and telephone number;
- (2) The location of the equipment subject to the challenged inspection report;
- (3) The inspection date;
- (4) The inspector who issued the challenged inspection report;
- (5) The specific findings or conclusions to which exception is taken;
- (6) The relief sought.

b. A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all relevant documents that the petitioning party desires the director to consider when evaluating the petition.

c. The director or a designee of the director is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the director deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the director to discover documents or other information that was not submitted with the petition for reconsideration.

d. Any petition for reconsideration that is not received by the office of the director within 30 days of the issuance of the challenged inspection report is untimely and will not be considered by the director.

e. The director will not consider any request for waiver of an administrative rule made as part of a petition for reconsideration. Requests for waivers of administrative rules may only be made to the board pursuant to the provisions of 481—Chapter 365.

f. In ruling on a petition for reconsideration, the director may:

- (1) Affirm the inspection report as issued;
- (2) Issue an amended inspection report;
- (3) Rescind the inspection report;
- (4) Deny the petition as untimely.

g. Any petition for reconsideration that is not ruled upon by the director within 20 days of receipt by the office of the director shall be deemed denied and the challenged inspection report affirmed as issued.

365.6(2) Appeal to the board. The director's ruling on a petition for reconsideration or the director's deemed denial of a petition for reconsideration may be appealed to the board. An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the director's written ruling on a petition for reconsideration or the director's deemed denial of a petition for reconsideration. At a minimum, an appeal includes a short and concise statement of the basis for the appeal. The required form for an appeal is available on the board's website. Consideration of an appeal of a ruling on a petition for reconsideration is a contested case proceeding subject to the provisions of Iowa Code chapter 17A. The director has an automatic right of intervention in any appeal of the ruling on petition for reconsideration and may defend the ruling in a contested case proceeding.

365.6(3) Informal review.

a. In order to preserve the ability of board members to participate in decision making, a party who elects an informal review under this rule waives the party's right to seek disqualification of a board member as a presiding officer in a later contested case proceeding based on the

board member's participation in the informal review. Parties would not be waiving their right to seek disqualification on any other ground.

b. The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

c. File transmitted to the board. Upon receipt of a notice of hearing issued by the board, the director shall within 30 days forward to the board and all parties of record to the appeal copies of the challenged inspection report, the appellant's petition for reconsideration and all supporting documents, all other documents collected by the director in ruling on the petition for reconsideration, and the director's ruling on the petition for reconsideration.

365.6(4) *Presiding officer.*

a. The presiding officer in all contested cases is the board, a panel of board members, or an administrative law judge assigned by the department of inspections, appeals, and licensing. When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. The board may be assisted by an administrative law judge when the board acts as presiding officer.

b. The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

c. All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board. A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by

an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

d. Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

365.6(5) Subpoenas in a contested case.

a. A request for a subpoena shall include the following information, as applicable:

- (1) The name, address, and telephone number of the person requesting the subpoena;
- (2) The name and address of the person to whom the subpoena will be directed;
- (3) The date, time, and location at which the person shall be commanded to attend and give testimony;

(4) Whether the testimony is requested in connection with a deposition or hearing;

(5) A description of the books, papers, records, or other evidence requested;

(6) The date, time and location for production or inspection and copying.

b. Each subpoena shall contain, as applicable:

(1) The caption of the case;

(2) The name, address, and telephone number of the person who requested the subpoena;

(3) The name and address of the person to whom the subpoena is directed;

(4) The date, time, and location at which the person is commanded to appear;

(5) Whether the testimony is commanded in connection with a deposition or hearing;

(6) A description of the books, papers, records, or other evidence the person is commanded to produce;

(7) The date, time and location for production or inspection and copying;

(8) The time within which a motion to quash or modify the subpoena must be filed;

(9) The signature, address, and telephone number of the presiding officer;

(10) The date of issuance;

(11) A return of service attached to the subpoena.

c. 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.

d. Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

e. A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

f. If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

365.6(6) Decisions.

a. Proposed decision. Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

b. Final decision. When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the counsel of record.

Emergency Rule-Making Document Filed by Agency