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

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

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

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

Editor's telephone (515) 281-3355 or (515) 281-8157

### **Insurance Division[191]**

Replace Chapter 20

### **Iowa Finance Authority[265]**

Replace Chapter 32

### **Professional Licensure Division[645]**

Replace Chapter 45

Replace Chapter 61

Replace Chapter 134

### **Veterans Affairs, Iowa Department of[801]**

Replace Chapter 10

### **Labor Services Division[875]**

Replace Analysis

Replace Chapters 65 to 70

### **Index**

Replace "I"



*PROPERTY AND CASUALTY INSURANCE*

## CHAPTER 20

## PROPERTY AND CASUALTY INSURANCE RATE AND FORM FILING PROCEDURES

[Prior to 10/22/86, Insurance Department[510]]

## DIVISION I

## FORM AND RATE REQUIREMENTS

**191—20.1(505,509,514A,515,515A,515F) General filing requirements.**

**20.1(1)** Insurance companies required to file rates or forms with the division shall submit required rate and form filings and any fees required for the filings electronically using the National Association of Insurance Commissioners' System for Electronic Rate and Form Filing (SERFF). Insurance companies must comply with the division's requirements, including both the Iowa general instructions and the specific submission requirements for the type of insurance for which the companies are submitting forms or rates, as set out on the SERFF Web site at [www.serff.org](http://www.serff.org).

**20.1(2)** No rate filing shall include any adjustment designed to recover underwriting or operating losses incurred out of state. Upon request by the commissioner, insurers doing business in Iowa shall segregate in their rate filings data from any state identified by the commissioner, and the filings shall include a certification that no portion of any rate increase is designed to recover underwriting or operating losses incurred in another state.

**191—20.2(505) Objection to filing.**

**20.2(1)** Any insured or established organization with one or more insureds among its members that has an objection to a form filing may submit to the insurance commissioner a written request for a hearing on the filing. A request for a hearing must be filed within 20 days after the filing has been received by the commissioner.

**20.2(2)** Within 20 days after receipt of the request for a hearing, the commissioner will hold a hearing to consider the objection to the filing. The commissioner will provide not less than 10 days' written notice of the time and place of the hearing to the person or association filing the demand, to the filing insurer or organization, and to any other person requesting notice. The commissioner may suspend or postpone the effective date of the filing pending the hearing. Upon consideration of the information received at the hearing, the commissioner may determine whether or not to approve the filing.

**191—20.3(515,515A,515C,518,518A,520) Letter of transmittal.** Rescinded IAB 10/25/06, effective 11/29/06.

**191—20.4(505,509,514A,515,515A,515F) Policy form filing.**

**20.4(1)** Each policy form, endorsement, application and agreement modifying the provisions of policies must bear an identification form number. This form number must be in the lower left-hand corner unless uniform or authentic forms are used.

**20.4(2)** All endorsements, riders and agreements restricting coverage provisions of the policy form previously issued must provide a signature line for acceptance by the named insured.

**20.4(3)** A form filing which has not been previously approved, disapproved or questioned shall be deemed approved on or after 30 days from its receipt.

**191—20.5(515A) Rate or manual rule filing.**

**20.5(1)** Every insurer shall determine and file its final rates with the commissioner pursuant to provisions of Iowa Code chapter 515F, except for insurers of workers' compensation who are specifically excluded by Iowa Code section 515F.5 and residual market mechanisms.

*a.* Advisory organizations may file on behalf of their member and subscriber companies prospective loss costs, supplementary rate information and supporting information as defined in Iowa Code section 515F.2. Advisory organization filings shall be filed and made effective in accordance with

the provisions of Iowa Code sections 515F.4 to 515F.6 or 515F.23 to 515F.25 that apply to the filing and approval of rates and supplementary rating information.

*b.* An insurer may satisfy its obligation to make rate filings by becoming a participating insurer of a licensed advisory organization that makes reference filings of advisory prospective loss costs and by authorizing the commissioner to accept such filings on its behalf. The insurer's rates shall be the prospective loss costs filed by the advisory organization which have been put into effect in accordance with 20.5(1) "a," combined with the loss cost adjustments which are filed in accordance with this paragraph.

*c.* An insurer may satisfy its obligation to make filings of supplementary rating information by becoming a participating insurer of a licensed advisory organization which makes such filings and by authorizing the commissioner to accept such filings on its behalf, subject to any modifications filed by the insurer.

*d.* If an insurer has previously filed forms modifying coverage provided by the applicable advisory organization forms, such fact should be noted in the rate filing.

**20.5(2)** Rate filings shall reflect that due consideration has been given to the factors enumerated in Iowa Code section 515F.4(1), and shall be accompanied by supporting statistical exhibits. In addition, each filing shall note the date of the last revision of rates affecting this coverage and briefly describe the nature of that revision.

**20.5(3)** Insurers making filings in their own behalf and advisory organizations shall identify each page filed by printing, typing or stamping their own name thereon.

**20.5(4)** If a company filing rates used the manuals of an advisory organization in its filings, any portion of the manuals of the organization which will not be followed by the filing must be clearly shown as deleted or amended by use of an appropriately numbered exception page.

**20.5(5)** For residual market mechanisms, insurers making filings in their own behalf shall identify the submission as an independent filing or a deviation from the bureau filing. A deviation filing is a submission which represents modification of a form or rate or rule previously filed by an authorized rating organization or advisory organization on behalf of its member and subscriber companies. If an insurer has previously filed forms modifying coverage provided by the applicable standard or bureau forms, such fact should be noted in the rate filing.

#### **191—20.6(515A) Exemption from filing requirement.**

**20.6(1)** An insurer requesting, pursuant to Iowa Code section 515F.5(4), suspension or modification of the requirement of filing of a rate shall provide the commissioner with a full explanation for the proposed exemption from the filing requirement together with any actuarial data available and shall furnish the commissioner with any additional material the commissioner may desire.

**20.6(2)** If the commissioner finds that a proposed rate represents a classification for which credible and homogeneous statistical experience does not exist and cannot be analyzed using standard actuarial techniques to produce a statistically significant average rate for the individual risks within the classification, the commissioner may exempt the proposed rate from the filing requirement.

**20.6(3)** An insurer shall maintain statistical records of the experience and expenses attendant upon the risks covered by any rate exempted by the commissioner from the filing requirement. The insurer may supplement statistical information with information filed with the commissioner by an advisory organization.

This rule is intended to implement Iowa Code section 515A.4(6).

#### **191—20.7(515E) Risk retention and purchasing groups.** Rescinded IAB 11/22/06, effective 12/27/06.

**191—20.8(515A) Rate filings for crop-hail insurance.** Rate filings for crop-hail insurance shall be submitted on or before March 15 of each calendar year. Each company may file one set of rates per policy plan per calendar year which shall remain in effect throughout the current crop year. In the absence of a new filing, rates on file from the previous year will remain in effect. Each filing shall be accompanied by a cover letter, synopsis sheet and supporting data which justifies the filed rate.

**191—20.9(515F) Licensing advisory organization.** Rescinded IAB 3/28/07, effective 5/2/07.

**191—20.10(515F) Exemptions.** Rescinded IAB 3/28/07, effective 5/2/07.

**191—20.11(515) Exemption from form and rate filing requirements.**

**20.11(1)** The following lines of insurance shall be exempt from the form filing requirements of Iowa Code section 515.109:

- Aircraft hull and aviation liability
- Difference-in-conditions
- Kidnap-ransom
- Manuscript policies and endorsements issued to not more than two insureds in Iowa
- Political risk
- Reinsurance
- Terrorism
- War risk
- Weather insurance

**20.11(2)** Insurers shall be exempt from filing rates for the lines of insurance exempted in 20.11(1).

**20.11(3)** An insurer shall within 30 days of request provide the commissioner with any of the information which is exempted from form and rate filing requirements.

**191—20.12(515,515F) Use of credit history in underwriting and making of rates for personal automobile and homeowners policies.** Rescinded IAB 11/24/04, effective 12/29/04.

**191—20.13 to 20.40** Reserved.

These rules are intended to implement Iowa Code chapter 515F and Iowa Code section 515.109.

DIVISION II  
IOWA FAIR PLAN ACT

**191—20.41(515,515F) Purpose.** This division is intended to implement and interpret 2003 Iowa Acts, chapter 119, for the purpose of establishing procedures and requirements for a mandatory risk-sharing facility for basic property insurance coverage. This division is also intended to encourage improvement of and reasonable loss prevention measures for properties located in Iowa and to further orderly community development.

**191—20.42(515,515F) Scope.** This division shall apply to all insurers licensed to write property insurance in Iowa.

**191—20.43(515,515F) Definitions.**

*“Basic property insurance”* means insurance against direct loss to property as defined in the standard fire policy and extended coverage, vandalism, and malicious mischief endorsements; homeowners insurance; and such other coverage or classes of insurance as may be added to the FAIR Plan by the commissioner. Basic property insurance shall include:

1. Coverage provided in the customary fire policy and in the customary extended coverage and builders risk endorsements.

2. Coverage against loss or damage by burglary or theft, or both.

3. Coverage at least equivalent to that provided in a modified coverage form homeowners policy.

*“Habitational risk”* means:

1. Dwellings, permanent or seasonal, designed for occupancy by not more than four families or containing not more than four apartments.

2. Private outbuildings used in connection with any of the risks described in “1.”

3. Trailer homes at a fixed location.

4. Household and personal property in risks described in “1” to “3.”

5. Tenants' contents in dwellings or apartment houses.

"*Iowa FAIR Plan*" or "*the Plan*" means the nonprofit, unincorporated mandatory risk-sharing facility established by this division to provide for basic property insurance.

"*Location*" means a single building and its contents, or contiguous buildings and their contents, under one ownership.

"*Manufacturing risks*" means those risks eligible to be written under the customary manufacturing business interruption policy forms approved by the commissioner. The following are not considered manufacturing risks:

1. Dry cleaning and laundering—Carpet, rug, furniture, or upholstery cleaning; diaper service or infants' apparel laundries; dry cleaning; laundries; linen supply.

2. Installation, servicing and repair—Electrical equipment; electronic equipment; glazing; household furnishings and appliances; office machines; plumbing, heating and air conditioning; protective systems for premises, vaults and safes.

3. Laboratories—Blood banks; dental laboratories; medical or X-ray laboratories.

4. Duplicating or similar services—Blueprinting and photocopying services; bookbinding; electrotyping; engraving; letter service (mailing or addressing companies); linotype or hand composition; lithographing; photo engraving; photo finishing; photographers (commercial).

5. Warehousing—Cold storage (locker establishments); cold storage warehouse; furniture or general merchandise warehouse.

6. Miscellaneous—Barber shops; beauty parlors; cemeteries; dog kennels; electroplating; equipment rental (not contractors' equipment); film and tape rental; funeral directors; galvanizing, tinning, detinning; radio broadcasting, commercial wireless and television broadcasting; taxidermists; telephone or telegraph companies; textiles (bleaching, dyeing, mercerizing or finishing of property of others); veterinarians and veterinary hospitals.

"*Motor vehicles*" means vehicles which are self-propelled.

"*Weighted premiums written*" means:

1. Gross direct premiums less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits, with respect to property in this state excluding premiums on risks insured under the Plan, for basic property insurance, for homeowners multiple peril policies, for farm dwelling policies and for the basic property insurance premium components of all other multiple peril policies.

2. In addition, 100 percent of the premiums obtained for homeowners multiple peril policies shall be added to 100 percent of the premiums obtained for basic property insurance and the basic property insurance premium components of all other multiple peril policies. The basic year for the computation shall be the first preceding calendar year.

#### **191—20.44(515,515F) Eligible risks.**

**20.44(1)** All risks at a fixed location shall be eligible for inspection and considered for insurance under the Plan except motor vehicles, inland marine risks, and manufacturing risks as defined above.

**20.44(2)** The maximum limits of coverage for the type of basic property insurance for customary fire and extended coverage which may be placed under the Plan are those established by the governing committee from time to time.

**20.44(3)** The maximum limits of coverage for the type of basic property insurance for burglary and theft which may be placed under the Plan are those established by the governing committee from time to time.

**20.44(4)** The maximum limits of coverage for the type of basic property insurance for homeowners coverage which may be placed under the Plan are those established by the governing committee from time to time.

**191—20.45(515,515F) Membership.**

**20.45(1)** Every insurer licensed to write one or more components of basic property insurance shall be considered a member of the Plan. Any other insurer may, upon application to and approval by the governing committee, become a member.

**20.45(2)** An insurer's membership terminates when the insurer is no longer authorized to write basic property insurance in Iowa, but the effective date of termination shall be the last day of the fiscal year of the Plan in which termination occurs. Any insurer so terminated shall continue to be governed by the provisions of this division until the insurer completes all of its obligations under the Plan.

**20.45(3)** Any voluntary insurer member may terminate its membership only as of the last day of the fiscal year of the Plan by giving written notice to the Plan 30 days prior to the last day of the fiscal year of the Plan. The governing committee upon a majority vote may terminate the membership of a voluntary insurer. Any such terminated member shall continue to be governed by the provisions of this division until the insurer completes all of its obligations under the Plan.

**20.45(4)** Subject to the approval of the commissioner, the governing committee may charge a reasonable annual membership fee.

**191—20.46(515,515F) Administration.**

**20.46(1)** The Plan shall be administered by the governing committee, subject to supervision of the commissioner, and operated by a manager appointed by the governing committee.

**20.46(2)** The governing committee shall consist of seven members, each of whom shall serve for a period of one year or until a successor is elected or designated. Each member shall have one vote.

**191—20.47(515,515F) Duties of the governing committee.**

**20.47(1)** The governing committee shall meet as often as may be required to perform the general duties of the administration of the Plan, or on the call of the commissioner. Four members of the committee present or by proxy shall constitute a quorum. Members of the committee who choose to appoint a proxy shall give a written proxy to the person elected to act as proxy. The written proxy shall then be filed with the governing committee, thus ensuring the validity of the proxy's actions as the governing committee performs its duties.

**20.47(2)** The governing committee shall be empowered to appoint a manager, who shall serve at the pleasure of the committee, to budget expenses, levy assessments, disburse funds, and perform all other duties of the Plan. The adoption of or substantive changes in pension plans or employee benefit programs for the manager and staff shall be subject to approval of the governing committee.

**20.47(3)** The governing committee may designate, with the approval of the commissioner, a rate service organization as defined in Iowa Code chapter 515F, to make inspections as required under the Plan and to perform such other duties as may be authorized by the governing committee.

**20.47(4)** The manager shall annually prepare an operating budget which shall be subject to approval of the governing committee.

**20.47(5)** The governing committee shall submit to the commissioner periodic reports setting forth information as the commissioner may request. On or before April 1 of each year, the governing committee shall submit a report summarizing any new programs or reforms in operation undertaken during the preceding calendar year in order to comply with any new legislation, regulations or directives affecting the Plan. This report shall contain a statistical tabulation on business written in accordance with the Plan.

**20.47(6)** The governing committee shall separately code all policies written by the Plan so that appropriate records may be compiled for purposes of performing loss prevention and other studies of the operation of the Plan.

**20.47(7)** The governing committee shall authorize the manager to file rates, surcharge schedules and forms for prior approval by the commissioner.

**20.47(8)** The governing committee shall prepare such agreements and contracts as may be necessary for the execution of this division consistent with its provisions.

**191—20.48(515,515F) Annual and special meetings.**

**20.48(1)** There shall be an annual meeting of the insurers on a date fixed by the governing committee at which time members may be chosen.

**20.48(2)** A special meeting shall be called by the governing committee within 40 days after receipt of written request from any ten insurers, not more than one of which may be in a group under the same management or ownership.

**20.48(3)** The time and place of all meetings shall be reasonable. Twenty days' notice of an annual or special meeting shall be given in writing by the governing committee to all insurers defined above. Four members present in person or by proxy shall constitute a quorum. Voting by proxy shall be permitted.

**20.48(4)** Any matter not inconsistent with the law or this division may be proposed and voted upon at any special meeting of the committee. Notice of any such proposal shall be mailed to each insurer not less than 20 days prior to the final date fixed by the committee for voting thereon.

**191—20.49(515,515F) Application for insurance.**

**20.49(1)** Any person who has an insurable interest in an eligible risk in property permitted to be written in the Plan and who has received within the last six months a notice of rejection, nonrenewal or cancellation from an insurer may apply for insurance by the Plan.

**20.49(2)** An inspection need not be made if the governing committee determines that insurance can be provided for specified classes of risks on the basis of representations of the applicant or insurance producer.

**20.49(3)** The Plan may bind coverage. The Plan may wait until receipt of the inspection report or receipt of additional underwriting information before determining whether to bind coverage. Coverage will be bound by the Plan by acknowledgement to the producer.

**191—20.50(515,515F) Inspection procedure.**

**20.50(1)** The inspection by the Plan shall be without cost to the applicant.

**20.50(2)** The manner and scope of the inspection shall be prescribed by the Plan with the approval of the commissioner.

**20.50(3)** An inspection report shall be made for each property inspected covering pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. Representative photographs may be taken during the inspection to indicate the pertinent features of building, construction, maintenance, occupancy, and surrounding property.

**20.50(4)** After the inspection, a copy of the completed inspection report and any relevant photographs shall be kept on file by the Plan. The report shall include a description of any deficient physical condition changes proposed by the inspector. A copy of the inspection report shall be made available to the applicant or producer upon request.

**191—20.51(515,515F) Procedure after inspection and receipt of application.**

**20.51(1)** After receipt of the application, the inspection report, and any additional underwriting information requested from the applicant, the Plan shall within five business days complete and send to the applicant an action report advising the applicant of one of the following:

*a.* That the risk is acceptable. If the inspection reveals substandard conditions, appropriate charges may be imposed, but the report shall specify the improvements necessary for removal of each such charge.

*b.* That the risk is declined unless reasonable improvements noted in the action report are made by the applicant and confirmed by reinspection.

*c.* That the risk is declined because it fails to meet reasonable underwriting standards as set forth in 20.52(515,515F). Reasonable underwriting standards as set forth in 20.52(515,515F) shall not include neighborhood or area location or any environment hazard beyond the control of the property owner.

**20.51(2)** If the risk is accepted, the action report shall advise the applicant of:

*a.* The amount of coverage the Plan agrees to write.

*b.* The amount of coverage the Plan agrees to write if specified improvements are made.

c. The amount of coverage the Plan agrees to write only if a large or special deductible is agreed to by the applicant.

**20.51(3)** If the risk is accepted, the Plan, upon receipt of the premium, shall deliver the policy to the applicant or to the licensed producer designated by the applicant for delivery to the applicant. The Plan shall remit the commissions to the licensed producer designated by the applicant.

**191—20.52(515,515F) Reasonable underwriting standards for property coverage.**

**20.52(1)** The following characteristics may be used in determining whether a risk is acceptable for property coverage. Where there is more than one cause for declination, all causes shall be listed and complied with before the property may be accepted for insurance purposes.

a. Physical condition of property; however, the mere fact that a property does not satisfy all current building code specifications will not, of itself, suffice as a reason for declination.

b. The property's present use as extended vacancy or extended unoccupancy of the property for 60 consecutive days. Properties that are vacant or unoccupied for more than 60 days may be insured while rehabilitation or reconstruction work is actively in process, meaning that the insured or owner should make monthly progress in order to complete the rehabilitation or reconstruction within a one-year time frame.

c. Other specific characteristics of ownership, condition, occupancy or maintenance that violate the law and that result in substantial increased exposure to loss. Any circumstance considered under this paragraph must relate to the peril insured against.

d. Physical condition of buildings which results in an outstanding order to vacate, in an outstanding demolition order or in being declared unsafe in accordance with the applicable law.

e. One or more of the conditions for nonrenewal as listed in 191—20.54(515,515F) currently exist. The Plan shall upon notice that conditions at the buildings have changed consider new application for coverage.

f. Vandalism and malicious mischief coverage shall not be provided for a dwelling or commercial property where the property has been subject to two vandalism and malicious mischief losses, each loss amounting to at least \$500, in the immediately preceding 12-month period, or three or more such losses in the immediately preceding 24-month period.

g. Previous loss history or matters of public record concerning the applicant or any person defined as an insured under the policy.

h. Any other guidelines which have been approved by the commissioner.

**20.52(2)** Reserved.

[ARC 8624B, IAB 3/24/10, effective 4/28/10]

**191—20.53(515,515F) Reasonable underwriting standards for liability coverage.**

**20.53(1)** The following characteristics may be used in determining whether a risk is acceptable for liability insurance on homeowner policies:

a. Broken, cracked, uneven or otherwise faulty steps, porches, decks, sidewalks, patios and similar areas.

b. Downspouts or drains which discharge onto sidewalks or driveways.

c. Unsafe conditions including inadequate lighting of stairways.

d. Animals known to be vicious or animals that have caused a liability claim.

e. Swimming pools or private ponds not fenced in accordance with local regulations.

f. Unsafe, or the absence of, handrails.

g. Junk cars, empty refrigerators, trampolines or other potentially dangerous objects in the yard which are an attraction to children.

h. Previous loss history or matters of public record concerning the applicant or any person defined as an insured under the policy.

i. Any other guidelines which have been approved by the commissioner.

**20.53(2)** Liability insurance shall only be provided as contained in the Iowa FAIR Plan homeowners policy.

**20.53(3)** Liability insurance shall not be provided for risks with any of the deficiencies set forth in paragraphs 20.53(1) “a” through “g,” as disclosed by the application or inspection, until the deficiencies have been corrected.

**20.53(4)** Liability insurance may not be provided where there is a business operating at the insured location, unless the applicant has in force a business liability policy with limits of at least \$100,000 per occurrence providing premises liability coverage.

**20.53(5)** Liability insurance shall not be provided where the applicant owns three or more horses or other riding animals, unless the applicant has in force a liability policy with limits of at least \$100,000 per occurrence providing coverage for the ownership and use of the horses or other riding animals.

**191—20.54(515,515F) Cancellation; nonrenewal and limitations; review of eligibility.**

**20.54(1)** The Plan shall not cancel or refuse to renew a policy issued by the Plan except for the following reasons:

*a.* Facts as confirmed by inspection or investigation which would have been grounds for nonacceptance of the risk by the Plan had they been known to the Plan at the time of acceptance.

*b.* Changes in the physical condition of the property or other changed conditions as confirmed by inspection or investigation that make the risk uninsurable pursuant to paragraphs “j” and “k.”

*c.* Nonpayment of premiums.

*d.* At least 65 percent of the rental units in the building are unoccupied, and the insured has not received prior approval from the Plan of a rehabilitation program which necessitates a high degree of unoccupancy.

*e.* Unrepaired damage exists and the insured has stated that repairs will not be made, or such time has elapsed as clearly indicates that the damage will not be repaired. The elapsed time under this paragraph is a length of time over 60 days where the damage remains unrepaired, unless there are known to be extenuating circumstances.

*f.* After a loss, permanent repairs have not been commenced within 60 days following payment of the claim, unless there are known to be extenuating circumstances. The 60-day period starts upon acceptance of payment of the claim.

*g.* Property has been abandoned for 90 days or more.

*h.* There is good cause to believe, based on reliable information, that the building will be burned for the purpose of collecting the insurance on the property. The removal of damaged salvageable items, such as normally permanent fixtures, from the building shall be considered under this paragraph when the insured can provide no reasonable explanation for such removal.

*i.* A named insured or loss payee or other person having a financial interest in the property being convicted of the crime of arson or a crime involving a purpose to defraud an insurance company. The fact that an appeal has been entered shall not negate the use of this paragraph.

*j.* The property has been subject to more than two losses, each loss amounting to at least \$500 or 1 percent of the insurance in force, whichever is greater, in the immediately preceding 12-month period, or more than three such losses in the immediately preceding 24-month period, provided that the cause of such losses is due to the conditions which are the responsibility of the owner named insured or due to the actions of any person defined as an insured under the policy.

*k.* Theft frequency in which there have been more than two thefts, each loss amounting to at least \$500, in a 12-month period.

*l.* Material misrepresentation in any statement to the Plan.

*m.* On homeowners policies, excessive theft or liability losses. If a given property has been subject to two vandalism and malicious mischief losses, each loss amounting to at least \$500, in the immediately preceding 12-month period, or three or more such losses in the immediately preceding 24-month period, the Plan may convert the homeowners policy to a dwelling policy without vandalism and malicious mischief coverage.

**20.54(2)** The Plan shall terminate all insurance contracts in accordance with Iowa Code sections 515.125, 515.127, and 515.128.

**20.54(3)** At the completion of 36 months of coverage and prior to the completion of 48 months, each risk shall be reviewed for its eligibility for coverage in the voluntary market. The risk shall be submitted by the Plan to the producer of record, if any, for a search of the voluntary market. If the producer resubmits the risk to the Plan, the risk must be resubmitted with a new application and a written statement from the producer that a search of the voluntary market was performed.

[ARC 8624B, IAB 3/24/10, effective 4/28/10]

**191—20.55(515,515F) Assessments.**

**20.55(1)** Participation and assessments by and upon each insurer in the Plan for losses and expenses in connection with Plan business shall be levied and assessed by the governing committee of the Plan on the basis of participation factors determined annually, giving effect to the proportion which such insurer's weighted premiums written bears to the aggregate weighted premiums written by all insurers in the Plan.

**20.55(2)** De minimis assessments. Any assessment of less than \$20 shall not be billed to an insurer, but will be accumulated as a deferred assessment until the cumulative amount deferred is at least \$20.

**20.55(3)** Late payment fee. Assessments shall be due and payable when billed. If any member fails to pay an assessment within 60 days after it is due, the insurer shall pay interest from the billing date at the rate of 1.5 percent per month. In the event that an insurer fails to pay any applicable late payment fee with an assessment, the amount of such unpaid late payment fee will be included in the amount of the insurer's next assessment.

**20.55(4)** Credits for voluntary writings. The Plan may develop a voluntary writing credit policy, subject to approval by the commissioner. Credits may be used as offsets to member company assessments made by the Plan.

**191—20.56(515,515F) Commission.**

**20.56(1)** Commission to the licensed producer designated by the applicant shall be 10 percent of all policy premiums. The Plan shall not license or appoint producers.

**20.56(2)** In the event of cancellation of a policy, or if an endorsement is issued which requires the premium to be returned to the insured, the producer shall refund proportionally to the Plan commissions on the return premium at the same rate at which such commissions were originally paid.

**191—20.57(515,515F) Public education.** In cooperation with the insurance commissioner, the Plan shall undertake a continuing education program with insurers, producers and consumers about the Plan's insurance program and its availability. All insurers and producers shall cooperate fully in the continuing education program. Such continuing education program will include the publication and distribution of literature:

1. Describing the Plan and its general operation;
2. Explaining the possible cost savings of obtaining insurance in the voluntary market; and
3. Advising of the availability of rate comparison charts.

**191—20.58(515,515F) Cooperation and authority of producers.**

**20.58(1)** Each insurer shall require its licensed producers to cooperate fully in the accomplishment of the intents and purposes of the Plan.

**20.58(2)** Licensed insurance producers shall not act as agents for the Plan.

**20.58(3)** Licensed insurance producers shall not do any of the following:

- a. Bind coverage for the Plan.
- b. Alter or change policies issued by the Plan.
- c. Settle losses of the Plan.
- d. Act on behalf of the Plan or commit the Plan to any course of action.

**20.58(4)** Licensed insurance producers shall assist applicants who need to apply for coverage under the Plan, and shall submit applications that meet the requirements under rule 20.49(515,515F). Producers shall follow the rules and procedures of the Plan.

**191—20.59(515,515F) Review by commissioner.** The governing committee shall report to the commissioner the name of any insurer or producer which fails to comply with the provisions of the Plan or with any rules prescribed thereunder by the governing committee or to pay within 30 days any assessment levied.

**191—20.60(515,515F) Indemnification.** Each person serving on the governing committee or any of its subcommittees, each member of the Plan, and the manager and each officer and employee of the Plan shall be indemnified by the Plan against all cost, settlement, judgment, and expense actually and necessarily incurred by that person in connection with the defense of any action, suit, or proceeding in which that person is made a party by reason of that person's being or having been a member of the governing committee or a member or manager or officer or employee of the Plan, except in relation to matters as to which that person has been judged in an action, suit, or proceeding to be liable by reason of willful misconduct in the performance of that person's duties as a member of the governing committee or as a member, manager, officer or employee of the Plan. This indemnification shall not apply to any loss, cost or expense on insurance policy claims under the Plan. Indemnification under this rule shall not be exclusive of other rights to which the member, manager, officer, or employee may be entitled as a matter of law.

These rules are intended to implement 2003 Iowa Acts, chapter 119.

[Filed July 1, 1975]

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<sup>1</sup> See IAB Insurance Division

CHAPTER 32  
IOWA JOBS PROGRAM

**265—32.1(16) Purpose.** The Iowa jobs board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the Iowa jobs program. The board will encourage and support public construction projects relating to disaster relief and mitigation and to local infrastructure.

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

**265—32.2(16) Definitions.** When used in this chapter, the following definitions apply unless the context otherwise requires:

“*Authority*” or “*IFA*” means the Iowa finance authority.

“*Board*” means the Iowa jobs board as established in 2009 Iowa Acts, Senate File 376, section 5.

“*Disaster*” means the severe storms, tornadoes, and flooding that occurred in Iowa between May 25, 2008, and August 13, 2008, and designated by FEMA as FEMA-1763-DR; additionally, the Iowa jobs board may, by resolution, designate an event that occurs subsequent to June 15, 2009, as a disaster.

“*Financial feasibility*” means the ability of a project, once completed, to be maintained and operated for its useful life with funds either generated by the project itself or from an identifiable source of funds available for such purpose.

“*Future flood prevention*” means measures intended to mitigate or lessen the damages caused by future flooding.

“*Indirect jobs*” means jobs created by suppliers of materials used in the construction or operation of the project.

“*Induced jobs*” means jobs collaterally created throughout the economy by a project as employed workers and firms buy other goods and services.

“*Iowa jobs program review committee*” or “*review committee*” means the committee established by 2009 Iowa Acts, Senate File 376, section 9(2), and constituted as described in this chapter.

“*Local infrastructure*” means:

1. Projects relating to disaster rebuilding;
2. Reconstruction and replacement of local public buildings;
3. Flood control and flood protection; and
4. Future flood prevention.

“Local infrastructure” does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

“*Local support*” means endorsement of a proposed project by local individuals, organizations, or governmental bodies that have a substantial interest in a project.

“*Program*” means the Iowa jobs program established in 2009 Iowa Acts, Senate File 376, sections 5 to 12.

“*Public construction project*” means a project for the construction of local infrastructure by a county, city, or public organization.

“*Public organization*” means a nonprofit organization that sponsors or supports the public needs of one or more local Iowa communities and that was in operation prior to January 1, 2009; provided that (1) such organization is described in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code and is exempt from federal tax under Section 501(a) of the Internal Revenue Code, and (2) such organization is determined by the board not to be affiliated with or controlled by a for-profit organization.

“*Recipient*” means an entity under contract with the Iowa jobs board to receive Iowa jobs funds and undertake a funded project.

“*Sustainability*” means the use, development, and protection of resources at a rate and in a manner that enables people to meet their current needs while allowing future generations to meet their own needs; “sustainability” requires simultaneously meeting environmental, economic and community needs.

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

**265—32.3(16) Allocation of funds.** All Iowa jobs funds shall be awarded and used as specified in 2009 Iowa Acts, Senate File 376, and these rules. Any portion of an amount allocated for projects that remains unexpended or unencumbered one year after the allocation has been made by the board may be reallocated by the board to another project category, at the discretion of the board. All bond proceeds shall be expended within three years from when the allocation was initially made. The total amount of allocations for future flood prevention, reconstruction and replacement of local public buildings, disaster rebuilding, flood control and flood protection projects (pursuant to the local infrastructure competitive grant program) shall not exceed \$165 million for the fiscal year beginning July 1, 2009.  
[ARC 7941B, IAB 7/15/09, effective 6/15/09]

**265—32.4(16) Local infrastructure competitive grant program.** The board shall assist in the development and completion of public construction projects relating to disaster relief and mitigation and to local infrastructure by overseeing and providing approval of the administration of a local infrastructure competitive grant program, as set forth herein.

**32.4(1) Iowa jobs program review committee.** The Iowa jobs program review committee shall comprise five members, consisting of the following members of the Iowa jobs board: three of the general public members, as appointed to the review committee by the Iowa jobs chair, the executive director of the Iowa finance authority (or designee), and the director of Iowa workforce development (or designee). The review committee shall comply with Iowa Code chapter 21 and with Iowa Code sections 69.16 and 69.16A. From its public members, the review committee shall elect a chair and a vice chair. Two-thirds of the review committee members eligible to vote shall constitute a quorum authorized to act in the name of the review committee.

**32.4(2) Eligible applicants.** Eligible applicants for Iowa jobs local infrastructure competitive grant program funds shall be Iowa cities, Iowa counties, and public organizations.

**32.4(3) Eligible projects and forms of assistance.** For a project to be eligible to receive a competitive grant from the board, the project must be a public construction project in the state of Iowa with a demonstrated substantial local, regional, or statewide economic impact. Financial assistance shall be awarded only in the form of grants. An applicant for a competitive grant shall not receive more than \$50 million in financial assistance from the Iowa jobs restricted capitals fund.

*a.* Any award of a competitive grant to a project shall be limited as follows:

(1) Up to 75 percent of the total cost of a project for replacing or rebuilding existing disaster-related damaged property; or

(2) Up to 50 percent of the total cost for all other projects.

*b.* The authority, with the approval of the chair and vice chair of the Iowa jobs board, shall have the ability to make technical corrections to an award that are within the intent of the terms of a board-approved award.

**32.4(4) Ineligible projects.** The board shall not approve an application for a competitive grant for either of the following purposes:

*a.* To refinance a loan existing prior to the date of the initial financial assistance application.

*b.* For a project that has previously received financial assistance under the local infrastructure competitive grant program, unless the applicant demonstrates that the financial assistance would be used for a significant expansion of such a project.

**32.4(5) Threshold application requirements.** To be considered for a competitive grant, an application shall meet all of the following threshold requirements:

*a.* Prior to filing an application, the applicant must file, on the form and in the manner prescribed by the authority, a notice of intent to apply not less than 20 days prior to submitting its application;

*b.* The application must be submitted by an eligible applicant, must be complete and on forms or in the format specified for such purpose by the authority (the authority may, in its discretion, require the use of a Web-based application format), and must be received by the authority by the applicable deadline;

*c.* The proposed project must be for the development and completion of one or more public construction projects relating to disaster relief and mitigation or to local infrastructure;

*d.* There must be demonstrated local support for the proposed project;

*e.* The proposed public construction project must have a demonstrated substantial local, regional, or statewide economic impact; and

*f.* The application must coordinate any federal funds with state, local, and private funds and shall avoid any duplication of benefits that would limit or cause the loss of federal funding.

Prior to submitting an application to the review committee, the authority may contact the applicant to clarify information contained in the application. An application may be amended one time prior to being sent to the review committee. Applications may be otherwise amended with the approval of a majority of the review committee.

**32.4(6) *Application procedure.***

*a.* Applications shall be reviewed and scored in rounds. The deadline for submission for the first round of applications shall be August 3, 2009. Subsequent rounds shall be at the discretion of the board as funding is available. Applications for each such round shall be due not later than January 1, April 1, July 1, and October 1 of each year, respectively.

*b.* Subject to availability of funds, applications will be reviewed by IFA staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be requested, in writing, to submit additional information. For applications that meet the threshold requirements, authority staff shall submit to the members of the review committee a copy of the application along with a review, analysis, and evaluation of complete applications.

*c.* The review committee members will score the applications according to the criteria set forth in subrule 32.4(7), and IFA staff shall compile the scores. To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points. The review committee shall meet to review the ratings for each round of applications. Those applications meeting the minimum criteria shall be referred to the Iowa jobs board with a recommendation of final approval, denial, or deferral.

*d.* Once an application has been referred to the Iowa jobs board, the applicant may, upon request of the applicant and at the discretion of the chair of the board, make a presentation to the board. The board may impose reasonable limitations on the length and format of such presentations.

*e.* If the board determines that an application should be approved, the board shall send the application to negotiations. Negotiations shall be conducted by IFA staff, who may work in cooperation with members of the Iowa jobs board. The negotiators shall negotiate the terms and conditions of a grant agreement to recommend to the board.

*f.* Following negotiations, the negotiating team shall report back to the Iowa jobs board as to whether it was able to agree with the applicant on the terms of a proposed grant agreement and, if so, the proposed terms and conditions resulting from the negotiations. The Iowa jobs board shall then vote, without further substantive revision, on whether to agree to the negotiated terms.

*g.* If the negotiated terms are agreed to by the Iowa jobs board, a grant agreement memorializing the negotiated terms shall be executed by the chair or vice chair of the Iowa jobs board.

*h.* Application resources for the Iowa jobs program are available at the Iowa jobs Web site: [www.ijobsiowa.gov](http://www.ijobsiowa.gov).

*i.* IFA may provide technical assistance as necessary to applicants. IFA staff may conduct on-site evaluations of proposed projects.

*j.* A denied or deferred application may be revised and resubmitted as a new application in a subsequent round, if any. Unless a deferred application is withdrawn by the applicant or revised and resubmitted as a new application, the authority shall keep it on file, and its score shall automatically be ranked among new applications submitted for the next round, if any, once such new applications have been scored.

**32.4(7) *Application review criteria.*** The Iowa jobs program review committee shall evaluate and rank applications based on the following criteria:

*a.* *The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment (0-40 points).* The number of jobs created and other measures of economic impact to areas distressed by high unemployment, including long-term tax generation, shall be evaluated. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Number of jobs. The number of jobs reasonably projected to be created or retained and the number of hours anticipated for each such job shall be compared and ranked.

(2) Quality of jobs. The wages to be paid for each position to be created or retained, the average benefits (including health benefits) to be provided, as well as other subjective qualitative factors, such as work conditions and safety, shall be compared and ranked.

(3) Other benefits likely to accrue to areas distressed by high unemployment, such as the degree to which the project enhances the quality of life in a region and contributes to the community's efforts to retain and attract a skilled workforce.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

*b. Financial feasibility, including the ability of projects to fund depreciation costs or replacement reserves, and the availability of other federal, state, local, and private sources of funds (0-40 points).* The feasibility of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) A financial analysis of the project, which shall include a description of sources of funding, project budget, and detailed projections of the project's revenues and expenses for the projected useful life of the project;

(2) An analysis of the operational plan, which shall provide detailed information about how the proposed project will be operated and maintained, including a time line for implementing the project;

(3) The availability of other federal, state, local, and private sources of funds for the project.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

*c. Sustainability and energy efficiency.* The sustainability and energy efficiency of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) Sustainability (0-20 points). The extent to which the project has taken sustainability planning principles into consideration.

1. The project shall be evaluated based on the following specific factors:

- Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; conservation of open space and farmland and preservation of critical environmental areas; and promotion of the safety, livability, and revitalization of existing urban and rural communities. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bicycle and pedestrian networks, and interconnection with the existing street grid.

- Provision for a variety of transportation choices, including public transit and pedestrian and bicycle traffic.

- Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

- Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

- The extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: (1) office of energy independence's Iowa energy independence plan; and (2) general reduction of greenhouse gas emissions.

2. Alternatively, in lieu of being evaluated on each of the criteria set forth above, projects which are designed to receive certification (either platinum level, gold level, silver level, or basic LEED certification) from the United States Green Building Council in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System version 3.0, and which comply with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329, shall receive 20 points.

(2) Energy efficiency (0-20 points). The extent to which the project has taken energy efficiency planning principles into consideration.

1. In the case of new construction, whether the project is designed to meet the current state building energy code. The application for the project must include a letter from the engineer or architect to IFA certifying whether the proposed construction meets the current state building energy code. Additionally, the application should address whether the proposed project is designed to meet energy star standards. If the project is of such a nature that the current state building energy code does not apply to it, the letter shall so state.

2. In the case of rehabilitation of existing structures, an energy audit conducted by a certified energy rater should be provided on each building prior to the preparation of the final work rehabilitation order to determine the feasibility of meeting the requirements of the current state building energy code and energy star standards prior to the start of the rehabilitation. If it is determined to be feasible to meet the current state building energy code standards and energy star standards, appropriate specifications will be written into the work order. If it is not feasible to meet the requirements of the current state building energy code and energy star standards (or either of them), the application will provide information indicating what effective and cost-effective energy improvements will be included as a part of the rehabilitation project.

*d. Benefits for disaster recovery (0-40 points).* The likely benefits for disaster recovery of the proposed project shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether the proposed project replaces or repairs a structure or facility damaged by the disaster and incorporates measures for reducing or eliminating future disaster losses;

(2) Whether the proposed project would help achieve the community's or region's overall post-disaster recovery vision;

(3) Whether the proposed project benefits the economic recovery of individuals, businesses, or nonprofit organizations.

*e. The project's readiness to proceed (0-40 points).* The readiness of the project to proceed shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether all engineering and architectural work required for construction to begin has been completed;

(2) Whether all financing for the project (other than competitive grant funds awarded under this chapter) has been committed and is available;

(3) Whether all real property interests (including easements and temporary construction easements) necessary for the construction of the project have been acquired;

(4) Whether all necessary governmental approvals, at the federal, state, and local levels (including, but not limited to, zoning variances, building permits, approval from the Army Corps of Engineers, etc.), have been obtained;

(5) Whether the project has demonstrated a reasonable likelihood of incurring at least 10 percent of the project's total projected development cost within three months of execution of the grant award agreement.

*f. General scoring criteria.*

(1) In instances where a given criterion is not applicable to a proposed project due to the nature of the project, the review committee members may adjust scoring so that the project is not disadvantaged as a result of the inapplicable criterion. For example, if an earthen levee is proposed as a means of flood control, it should not lose points relative to other proposed projects because it does not comply with the current state building energy code (which does not apply to earthen levees).

(2) Any proposed project that is identified in an Iowa great places agreement, pursuant to Iowa Code section 303.3C, shall have an additional two points added to its cumulative point total.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8103B, IAB 9/9/09, effective 8/19/09; ARC 8327B, IAB 12/2/09, effective 11/4/09; ARC 8456B, IAB 1/13/10, effective 2/17/10; ARC 8545B, IAB 2/24/10, effective 3/31/10]

**265—32.5(16) Noncompetitive grants.**

**32.5(1)** The board shall award \$46,500,000 as follows for disaster relief and mitigation and local infrastructure grants for the following renovation and construction projects, notwithstanding any limitation on the state's percentage participation in funding as contained in Iowa Code section 29C.6(17):

*a.* For grants to a county with a population between 189,000 and 196,000 in the latest preceding certified federal census, to be distributed as follows:

(1) Ten million dollars for the construction of a new, shared facility between nonprofit human service organizations serving the public, especially the needs of low-income Iowans, including those displaced as a result of the disaster of 2008.

(2) Five million dollars for the construction or renovation of a facility for a county-funded workshop program serving the public and particularly persons with mental illness or developmental disabilities.

*b.* For grants to a city with a population between 110,000 and 120,000 in the latest preceding certified federal census, to be distributed as follows:

(1) Five million dollars for an economic redevelopment project benefiting the public by improving energy efficiency and the development of alternative and renewable energy technologies.

(2) Ten million dollars for a museum serving the public and dedicated to the preservation of an eastern European cultural heritage through the collection, exhibition, preservation, and interpretation of historical artifacts.

(3) Five million dollars for a theater serving the public and promoting culture, entertainment, and tourism.

(4) Five million dollars for a public library.

(5) Five million dollars for a public works building.

*c.* One million five hundred thousand dollars, to be distributed as follows:

(1) Five hundred thousand dollars to a city with a population between 600 and 650 in the latest preceding certified federal census, for a public fire station.

(2) Five hundred thousand dollars to a city with a population between 1,400 and 1,500 in the latest preceding certified federal census, for a public fire station.

(3) Five hundred thousand dollars for a city with a population between 7,800 and 7,850, for a public fire station.

**32.5(2)** Noncompetitive grant awards are contingent upon submission of a plan for each project by the applicable county or city governing board or, in the case of a project submitted pursuant to subparagraph 32.5(1) "b"(2), by the board of directors, to the Iowa jobs board no later than September 1, 2009, detailing a description of the project, the plan to rebuild, and the amount or percentage of federal, state, local, or private matching moneys which will be or have been provided for the project. Funds not utilized in accordance with this rule due to failure to submit a plan by the September 1 deadline shall revert to the Iowa jobs restricted capitals fund to be available for local infrastructure competitive grants.

**32.5(3)** A grant recipient under subparagraph 32.5(1) "b"(2) shall not be precluded from applying for a local infrastructure competitive grant pursuant to this rule and 2009 Iowa Acts, Senate File 376, section 9.

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

**265—32.6(16) General grant conditions.** As a condition of receipt of Iowa jobs funds, recipients shall agree, at a minimum, to all of the following:

**32.6(1)** *Documentation of jobs created or retained.* Following the receipt of grant funds pursuant to this chapter and for two years following the completion of the project, each recipient shall report to the authority quarterly the actual number of jobs created as a result of the project along with other information relating to the quality of such jobs, including hours and wages, as requested by the authority.

**32.6(2)** *Recipient obligations.* In the event a recipient fails to comply with the requirements of this program or the recipient's grant agreement, the board may cancel the recipient's grant and require the return of any grant funds previously disbursed pursuant to this program. Recipients shall agree to hold

harmless and to indemnify the Iowa jobs board, the authority, the state of Iowa, and their officers, employees and agents from any claims, costs or liabilities arising out of the development or operation of the project.

**32.6(3) Grant acknowledgment.** Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or a similar commemoration. Other benefactors of the project may be similarly acknowledged as well.

**32.6(4) Use of Iowa jobs Web site.** All positions that need to be filled for a project shall be posted on Iowa workforce development's Iowa jobs Web site: [www.iowajobs.org/](http://www.iowajobs.org/).

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

**265—32.7(16) Calculation of jobs created.** For purposes of this chapter, new employment positions created and filled (or to be created and filled) as a result of the project and existing positions that would not have been continued were it not for Iowa jobs funding shall be counted when estimating the number of jobs to be created during the application process and when counting the number of actual jobs created in post-grant reporting. Both permanent and temporary positions filled by the grantee, a contractor, or a subcontractor (or sub-subcontractor, etc.), including construction work, shall be counted. To be counted, a position must be compensated. Indirect jobs and induced jobs shall not be counted.

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

**265—32.8(16) Grant awards.** The Iowa jobs board may fund a component of a proposed project if the entire project does not qualify for funding. The board shall review awards made to ensure geographic diversity. In order to promote geographic diversity, the board may defer grant decisions on applications from areas which have received previous grant awards to allow applications from other parts of the state to be considered. In the event that a competitive grant recipient, prior to execution of an Iowa jobs grant agreement, is awarded a federal grant for its project, in whole or in part, which federal grant, or the possibility thereof, was not disclosed as part of the recipient's application, the board may withdraw all or part of the Iowa jobs program grant.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8455B, IAB 1/13/10, effective 12/14/09; ARC 8626B, IAB 3/24/10, effective 4/28/10]

**265—32.9(16) Administration of awards.**

**32.9(1)** A grant agreement shall be executed between successful applicants (under both the competitive and noncompetitive grant programs) and the Iowa jobs board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

**32.9(2) Grant agreement.**

*a.* Following the board's determination that a competitive grant application should be approved, authority staff shall propose a draft grant agreement to the recipient. Within 30 days of either transmission of the proposed grant agreement to the recipient or transmission of notice of how the proposed grant agreement may be accessed by the recipient via the Internet, the recipient shall notify the authority as to whether the recipient will execute the proposed agreement or whether the recipient would prefer to negotiate a different agreement. If the recipient elects to execute the proposed agreement, or if the recipient fails to make a timely election, the authority shall prepare and transmit to the recipient on behalf of the board a final contract for execution.

*b.* If the recipient elects to negotiate a different agreement, the recipient shall, at the time it makes such election, notify the authority of the requested changes to the proposed grant agreement. The authority shall consider the requested changes and may make such revisions to the proposed agreement as the authority determines to be prudent and in the best interests of the Iowa jobs program and the state of Iowa under the circumstances.

*c.* Once the authority and the recipient have reached an agreement, the authority shall prepare and transmit to the recipient on behalf of the board a final contract, subject to approval by the board.

*d.* If the authority and the recipient are unable to reach an agreement, the authority shall, with the board's approval, draft and transmit to the recipient on behalf of the board a final contract consisting of the Iowa jobs board's best and final offer.

**32.9(3)** The recipient must execute and return the contract to the Iowa jobs board within 45 days of transmittal of the final contract from the Iowa jobs board. Failure to do so may be cause for the Iowa jobs board to terminate the award.

**32.9(4)** Certain projects may require that permits or clearances be obtained from other state, local, or federal agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

**32.9(5)** Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

**32.9(6)** Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions, and significant alterations that change the scope, location, objectives or scale of an approved project. Amendments must be requested in writing by the recipient and are not considered effective until approved by the Iowa jobs board and confirmed in writing by IFA staff following the procedure specified in the contract between the recipient and the Iowa jobs board.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8455B, IAB 1/13/10, effective 12/14/09; ARC 8626B, IAB 3/24/10, effective 4/28/10]

These rules are intended to implement Iowa Code section 16.5(1) "r" and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

[Filed Emergency ARC 7941B, IAB 7/15/09, effective 6/15/09]

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CHAPTER 45  
DISCIPLINE FOR CHIROPRACTIC PHYSICIANS  
[Prior to 7/24/02, see 645—Ch 44]

**645—45.1(151) Definitions.**

*“Board”* means the board of chiropractic.

*“Discipline”* means any sanction the board may impose upon licensees.

*“Licensee”* means a person licensed to practice as a chiropractic physician in Iowa.

**645—45.2(151,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—45.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

**45.2(1)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

*a.* False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

*b.* Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

**45.2(2)** Professional incompetency. Professional incompetency includes, but is not limited to:

*a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

*b.* A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other chiropractic physicians in the state of Iowa acting in the same or similar circumstances.

*c.* A failure to exercise the degree of care which is ordinarily exercised by the average chiropractic physician acting in the same or similar circumstances.

*d.* Failure to conform to the minimal standard of acceptable and prevailing practice of a chiropractic physician in this state.

*e.* Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

*f.* Being adjudged mentally incompetent by a court of competent jurisdiction.

*g.* Failure to maintain for a minimum of six years from one of the following dates, as applicable, clinical and fiscal records in support of services rendered. For the purposes of this rule, clinical records shall include all laboratory and diagnostic imaging studies.

(1) For an adult patient, the last office visit.

(2) Records for minors shall be maintained for a minimum of either (a) one year after the patient reaches the age of majority (18), or (b) five years, whichever is longer.

**45.2(3)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. This includes representations utilizing the term “physical therapy” when informing the public of the services offered by the chiropractic physician unless a licensed physical therapist is performing such services. Nothing herein shall be construed as prohibiting a chiropractic physician from making representations regarding physiotherapy that may be the same as, or similar to, physical therapy or physical medicine as long as treatment is appropriate as authorized in Iowa Code chapter 151. Proof of actual injury need not be established.

**45.2(4)** Practice outside the scope of the profession.

**45.2(5)** Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted

through fraud or misrepresentation or representations that are likely to cause the average person to misunderstand.

**45.2(6)** Habitual intoxication or addiction to the use of drugs.

**45.2(7)** Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

**45.2(8)** Falsification of client records.

**45.2(9)** Acceptance of any fee by fraud or misrepresentation.

**45.2(10)** Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**45.2(11)** Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**45.2(12)** Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

**45.2(13)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**45.2(14)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

**45.2(15)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**45.2(16)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

**45.2(17)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**45.2(18)** Failure to comply with a subpoena issued by the board, or otherwise fail to cooperate with an investigation of the board.

**45.2(19)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**45.2(20)** Failure to pay costs assessed in any disciplinary action.

**45.2(21)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**45.2(22)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**45.2(23)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a chiropractic physician.

**45.2(24)** Failure to report a change of name or address within 30 days after it occurs.

**45.2(25)** Representing oneself as a chiropractic physician when one's license has been suspended or revoked, or when one's license is on inactive status.

**45.2(26)** Permitting another person to use the licensee's license for any purposes.

**45.2(27)** Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

**45.2(28)** Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

*a.* Verbally or physically abusing a patient, client or coworker.

*b.* Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

- c. Betrayal of a professional confidence.
- d. Engaging in a professional conflict of interest.

**45.2(29)** Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

**45.2(30)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

[ARC 8625B, IAB 3/24/10, effective 4/28/10]

**645—45.3(147,272C) 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 licensee's 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—45.4(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 ensuring a high standard of professional care to the citizens of this state;
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; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

**645—45.5(151) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** Rescinded IAB 8/13/08, effective 9/17/08.

These rules are intended to implement Iowa Code chapters 147, 151 and 272C.

[Filed 12/8/00, Notice 10/18/00—published 12/27/00, effective 1/31/01<sup>1</sup>]

[Filed 9/27/01, Notice 6/13/01—published 10/17/01, effective 11/21/01]

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[Filed 7/17/08, Notice 5/7/08—published 8/13/08, effective 9/17/08]<sup>◇</sup>

[Filed ARC 8625B (Notice ARC 8278B, IAB 11/18/09), IAB 3/24/10, effective 4/28/10]

<sup>◇</sup> Two or more ARCs

<sup>1</sup> Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held January 29, 2001; delay lifted by the committee at its meeting held February 9, 2001, effective 2/10/01.

CHAPTER 61  
LICENSURE OF SALONS AND SCHOOLS  
OF COSMETOLOGY ARTS AND SCIENCES

[Prior to 7/29/87, Health Department[470] Ch 149]

[Prior to 12/23/92, see 645—Chapter 60]

**645—61.1(157) Definitions.**

“*Clinic area*” means the area of the school where the paying customers will receive services.

“*Dispensary*” means a separate area to be used for storing and dispensing of supplies and sanitizing of all implements.

“*Inactive license*” means a salon license or a school license that has not been renewed as required or the license of a salon or school that has failed to meet stated obligations for renewal within a stated time.

“*Mentor*” means a licensee providing guidance in a mentoring program.

“*Mentoring*” means a program allowing students to experience cosmetology arts and sciences in a licensed salon under the guidance of a mentor.

“*Salon license*” means an establishment licensed to provide cosmetology services to paying customers.

“*School*” means a school of cosmetology arts and sciences.

“*School license*” means a license issued to an establishment to instruct students in cosmetology arts and sciences.

**645—61.2(157) Salon licensing.** No person shall operate a salon unless the owner has obtained a license issued by the board. A separate enclosed area inside a salon that is operated as an independent business for the purpose of providing cosmetology services shall be considered its own salon and shall not operate unless a salon license is obtained.

**61.2(1)** The owner shall complete a board-approved application form. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>), or directly from the board office. All applications shall be submitted to the Board of Cosmetology Arts and Sciences, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*a.* The application shall be completed according to the instructions contained in the application and submitted 30 days prior to the anticipated opening day. If the application is not completed according to the instructions, the application will not be reviewed by the board.

*b.* Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Cosmetology Arts and Sciences. The fees are nonrefundable.

**61.2(2)** Each salon shall meet the requirements for sanitary conditions established in 645—Chapter 63 to be eligible for licensing. The salon shall be inspected for compliance with sanitation rules within 12 months following the issuance of the salon license.

**61.2(3)** Business may commence at the salon following receipt of the license.

**61.2(4)** Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records will be maintained after two years only if the applicant submits a written request to the board.

**61.2(5)** A salon license shall be issued for a specific location. A change in location or site of a salon shall require submission of an application for a new license and payment of the fee required by 645—subrule 62.1(16). A change of address without change of actual location shall not be construed as a new site.

**61.2(6)** A salon license is not transferable.

*a.* A change in ownership of a salon shall require the issuance of a new license. “Change in ownership” means any change of controlling interest in any corporation or any change of name of sole proprietorship or partnership.

*b.* A salon cannot be sold if disciplinary actions are pending.

*c.* If a salon owner sells the salon, that owner must send the license certificate and a report of the sale to the board within 10 days of the date on which the sale is final. The owner of the salon on record shall retain responsibility for the salon until the notice of sale is received in the board office.

- d. The board may request legal proof of the ownership transfer.
- e. The owner shall notify the board in writing of a change of name or address within 30 days after the occurrence and, in addition, shall return the current certificate and pay the reissued certificate fee as specified in rule 645—62.1(147,157).  
[ARC 8515B, IAB 2/10/10, effective 3/17/10]

**645—61.3(157) Salon license renewal.**

**61.3(1)** The biennial license renewal period for a salon license shall begin on January 1 of every odd-numbered year and end on December 31 two years later.

**61.3(2)** A renewal of license application shall be mailed to the owner of the salon at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the owner of the obligation to pay the biennial renewal fee on or before the renewal date.

**61.3(3)** A salon that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

**61.3(4)** The salon owner shall submit the completed application with the renewal fee to the board office before the license expiration date.

**61.3(5)** A salon shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the salon shall be sent a license renewal card by regular mail.

**61.3(6)** If the renewal fee and renewal application are postmarked after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

**645—61.4(272C) Inactive salon license.**

**61.4(1)** If the renewal application and fee are not postmarked within 30 days after the license expiration date, the salon license is inactive. To reactivate a salon license, the reactivation application and fee shall be submitted to the board office.

**61.4(2)** A salon that has not renewed the salon license within the required time frame will have an inactive license and shall not provide cosmetology services until the license is reactivated.

**645—61.5(157) Display requirements for salons.**

**61.5(1)** Every salon shall have a sign visible outside the entrance designating the place of business.

**61.5(2)** The most current salon renewal card shall be posted in the front entrance area at eye level so that it is visible to the public.

**61.5(3)** The most current license renewal card for each licensee working in the salon shall be visibly displayed in the front entrance area at eye level.

**61.5(4)** If the licensee works in more than one salon, the current renewal card shall be posted in the primary place of practice, and the licensee shall have the current wallet card in the licensee's possession.

**61.5(5)** Each licensee shall have a valid U.S. government-issued photo ID to provide to an agent of the board upon request as proof of identity.  
[ARC 8515B, IAB 2/10/10, effective 3/17/10]

**645—61.6(147) Duplicate certificate or wallet card for salons.**

**61.6(1)** A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or duplicate certificate shall only be issued under such circumstances.

**61.6(2)** A duplicate salon wallet card or certificate shall be issued upon receipt of a completed application and receipt of the fee as specified in 645—subrule 62.1(5).

**61.6(3)** If the board receives a completed application stating that the owner of the salon has not received the wallet card or certificate within 60 days after the card or certificate is mailed by the board, no fee shall be required for issuing the duplicate wallet card or certificate.

**645—61.7(157) Licensure for schools of cosmetology arts and sciences.**

**61.7(1)** An application for a school license shall be submitted 90 days prior to the anticipated opening day of the school to the Board of Cosmetology Arts and Sciences, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The application shall include:

- a.* A complete plan of the physical facilities and an explanation detailing how the facilities will be utilized relative to classrooms, clinic space, and a mentoring program;
- b.* A list of the names of licensed instructors for the proposed school if the instructors have been hired by the school; and
- c.* Copies of the catalog, brochure, enrollment contract, student policies, and cancellation and refund policies that will be used by the school or distributed by the school to students and the public.

**61.7(2)** Prior to the issuance of the school license, the school shall:

- a.* Submit a final list of licensed instructors for the school. The number of instructors must meet the requirement outlined in Iowa Code section 157.8 with the exception of instructors for the mentoring program;
- b.* Submit the school's course of study, which shall meet the requirements outlined in rule 645—61.14(157); and
- c.* Meet the requirements of this chapter and 645—Chapter 63 and pass the board's inspection of the facility.

**61.7(3)** The school owner may be interviewed by the board.

**61.7(4)** After all criteria have been met, the school license shall be granted for the location(s) identified in the school's application.

**61.7(5)** Instruction of students shall not begin until the school license is issued and has been approved by the college student aid commission.

**61.7(6)** Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records will be maintained after two years only if the applicant submits a written request to the board.

**61.7(7)** A change of location shall require submission of an application for a new school license and payment of the license fee. A change of address without a change of actual location shall not be construed as a new site.

**61.7(8)** A school license is not transferable. A change in ownership of a school shall require the issuance of a new license. "Change in ownership" means any change of controlling interest in any corporation or any change of name of sole proprietorship or partnership.

- a.* A school cannot be sold if disciplinary actions are pending.
- b.* The board may request legal proof of the ownership transfer.
- c.* If a school owner sells the school, that owner must send the license certificate and a report of the sale to the board within 10 days of the date on which the sale is final. The owner of the school on record shall retain responsibility for the school until the notice of sale is received in the board office.
- d.* The owner shall notify the board in writing of a change of name or address within 30 days after the occurrence and, in addition, shall return the current certificate and pay the reissued certificate fee as specified in rule 645—5.5(147,157).

[ARC 8515B, IAB 2/10/10, effective 3/17/10]

**645—61.8(157) School license renewal.**

**61.8(1)** The annual license renewal period for a school license shall begin on July 1 and end on June 30 one year later.

**61.8(2)** A renewal of license application shall be mailed to the school at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the school of the obligation to pay the annual renewal fee on or before the renewal date.

- a.* The renewal application and renewal fee shall be submitted to the board office before the license expiration date.

b. Schools shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the school shall be sent a license renewal card by regular mail.

c. Schools shall successfully complete the annual inspection pursuant to Iowa Code sections 157.6 and 157.8.

**61.8(3)** A school that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal one year later.

**61.8(4)** If the renewal fee and renewal application are postmarked after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

[ARC 8515B, IAB 2/10/10, effective 3/17/10]

**645—61.9(272C) Inactive school license.**

**61.9(1)** If the renewal application and fee are not postmarked within 30 days after the license expiration date, the school license is inactive. To reactivate the school license, the reactivation application and fee shall be submitted to the board.

**61.9(2)** A school that has not renewed the school license within the required time frame will have an inactive license and shall not provide schooling or services until the license is reactivated.

**645—61.10(157) Display requirements for schools.**

**61.10(1)** Every school shall have a sign visible outside the entrance designating the place of business.

**61.10(2)** A school license and the current renewal card shall be posted and visible to the public in the reception area at eye level.

**61.10(3)** The original license certificate, duplicate certificate, or reissued certificate for each instructor working at the school shall be visibly displayed in the reception area at eye level.

**645—61.11(147) Duplicate certificate or wallet card for schools.** Rescinded IAB 12/31/08, effective 2/4/09.

**645—61.12(157) Physical requirements for schools of cosmetology arts and sciences.** The school shall meet the following physical requirements:

**61.12(1)** The school premises shall have a minimum floor space of 3000 square feet and, when the enrollment in a school exceeds 30 students, additional floor space of 30 square feet shall be required for each additional student enrolled in the school.

**61.12(2)** Each licensed school shall provide at least one clinic area where the paying public will receive services. The clinic area shall be confined to the premises occupied by the school.

**61.12(3)** A school shall provide a theory classroom(s) separate from the clinic area.

**61.12(4)** Each school shall maintain a library for students consisting of textbooks, current trade publications and business management materials.

**61.12(5)** The school shall have a separate area to be used as a dispensary. The dispensary shall be equipped with lavatory, shelves or drawers for storing chemicals and sanitized articles, a wet sterilizer and any other sanitation items required in 645—Chapter 63.

**61.12(6)** Two restrooms shall be equipped with toilets, lavatories, soap and towel dispensers.

**61.12(7)** A laundry room shall be separated from the clinic area by a full wall or partition.

**61.12(8)** A separate room shall be equipped for the practice of esthetics and electrology.

**61.12(9)** Each licensed school shall have an administrative office.

**645—61.13(157) Minimum equipment requirements.** Each school of cosmetology arts and sciences shall have the following minimum equipment:

1. Workstations equipped with chair, dresserette, closed drawer or container for sanitized articles, and mirror (maximum of two students per unit);

2. One set of textbooks for each student and instructor;

3. Shampoo bowls located in the clinic area and readily accessible for students and clients if the school offers a curriculum course in cosmetology;
4. Audiovisual equipment available for each classroom;
5. Chair and table area for each student in the classroom; and
6. Labeled bottles and containers showing intended use of the contents.

**645—61.14(157) Course of study requirements.** A school of cosmetology arts and sciences shall not be approved by the board of cosmetology arts and sciences unless it complies with the course of study requirements as provided below.

**61.14(1) Requirements for hours.**

**COSMETOLOGY CURRICULUM**

Core life sciences	150 hours	
Cosmetology theory (Including business and management related to the practice of cosmetology.)	615 hours	
Total core life sciences and cosmetology theory is 765 hours.		
Applied practical instruction	1335 hours	
Total course of study		2100 hours (70 semester credit hours)

**ELECTROLOGY CURRICULUM**

Core life sciences	150 hours	
Electrology theory	50 hours	
Applied practical instruction	225 hours	
Total course of study		425 hours (14 semester credit hours)

**ESTHETICS CURRICULUM**

Core life sciences	150 hours	
Esthetics theory	115 hours	
Applied practical instruction	335 hours	
Total course of study		600 hours (20 semester credit hours)

**NAIL TECHNOLOGY CURRICULUM**

Core life sciences	150 hours	
Nail technology theory	50 hours	
Applied practical instruction	125 hours	
Total course of study		325 hours (11 semester credit hours)

Proof of curriculum requirements may be submitted to the board by either the clock hour or semester credit hour standard. Semester credit hours or the equivalent thereof shall be determined pursuant to administrative rules and regulations promulgated by the U.S. Department of Education.

**61.14(2) Curriculum requirements.**

- a. Theory instruction shall be taught from a standard approved textbook, but may be supplemented by other related textbooks.
- b. Course subjects taught in the school curriculum, including skills and business management, shall relate to the specific practice discipline.
- c. Required hours for theory and applied practical hours do not have to be obtained from one school.
- d. Core life sciences curriculum hours shall be transferable in their entirety from one practice discipline to another practice discipline.

*e.* Only hours from accredited or board-approved school programs will be accepted.

**61.14(3)** Core life sciences curriculum. The core life sciences curriculum shall contain the following instruction:

- a.* Human anatomy and physiology:  
Cell, metabolism and body systems,  
Human anatomy;
- b.* Bacteriology;
- c.* Infection control practices:  
Universal precautions,  
Sanitation,  
Sterilization,  
Disinfection;
- d.* Basic chemistry;
- e.* Matter;
- f.* Elements:  
Compounds and mixtures;
- g.* Basic electricity;
- h.* Electrical measurements:  
Reproduction of light rays,  
Infrared rays,  
Ultraviolet rays,  
Visible rays/spectrum;
- i.* Safety;
- j.* Hygiene and grooming:  
Personal and professional health;
- k.* Professional ethics;
- l.* Public relations; and
- m.* State and federal law, administrative rules and standards.

Clock hours may be converted to credit hours using a standard, recognized method of conversion.

**61.14(4)** The school shall maintain a copy of the curriculum plan for two years after the curriculum plan was taught by the school.

**645—61.15(157) Instructors.** All instructors in a school of cosmetology arts and sciences shall be licensed by the department.

**61.15(1)** An instructor teaching a course in electrology, esthetics or nail technology shall also hold a license in that practice or hold a cosmetology license that shows proof of having completed training in those practices equivalent to that of a license holder in that practice.

**61.15(2)** An instructor teaching a course in microdermabrasion, chemical peels, IPLs and lasers shall be certified by the state of Iowa to provide each of the services, as set forth in rule 645—60.4(157).

**61.15(3)** The number of instructors for each school of cosmetology arts and sciences shall be based upon total enrollment, with a minimum of 2 instructors employed on a full-time basis for up to 30 students and an additional instructor for each additional 15 students. The school shall have 2 instructors on duty during school hours. A student instructor shall not be used to meet licensed instructor-to-student ratios. A school operated by an area community college prior to September 1, 1982, with only 1 instructor per 15 students is not subject to this subrule and may continue to operate with the ratio of 1 instructor to 15 students. A student instructor shall not be used to meet licensed instructor-to-student ratios.

**61.15(4)** An instructor shall:

- a.* Be responsible for and in direct charge of all theory and practical classrooms and clinics at all times;
- b.* Familiarize students with the different standard supplies and equipment used in salons; and

*c.* Not perform cosmetology services, with or without compensation, on the school premises except for demonstration purposes.

[ARC 8515B, IAB 2/10/10, effective 3/17/10 (See Delay note at the end of chapter)]

**645—61.16(157) Student instructors.** A student instructor shall be a graduate of an approved school of cosmetology arts and sciences. Each student instructor shall be under the direct supervision of a licensed instructor at all times.

**645—61.17(157) Students.**

**61.17(1)** A school of cosmetology arts and sciences shall, prior to the time a student is obligated for payment, inform the student of all provisions set forth in Iowa Code section 714.25. The school shall retain a copy of the signed statement for two years following the student's graduating or leaving the program.

**61.17(2)** Students shall:

*a.* Wear clean and neat uniforms at all times during school hours and during the mentoring program;

*b.* Be supervised by a licensed instructor at all times except in a mentoring program when the students shall be under the guidance of a mentor;

*c.* Be provided regularly scheduled breaks and a minimum of 30 minutes for lunch;

*d.* Attend school no more than eight hours a day. Schools may offer additional hours to students who submit a written request for additional hours;

*e.* Receive no compensation from the school for services performed on clients;

*f.* Provide services to the public only after completion of a minimum of 10 percent of the course of study;

*g.* Not be called from theory class to provide services to the public;

*h.* Not be required to perform janitorial services or be allowed to volunteer for such services. Sanitation of the bathroom area shall be limited to replacing products and disinfecting the vanity and mirror surfaces. Sanitation of the toilet and bathroom floor areas is not to be performed by the student and is excluded from student sanitation duty; and

*i.* Receive no credit or hours for decorating for marketing or merchandising events or for participating in demonstrations of cosmetology arts and sciences when the sole purpose of the event is to recruit students and the event is outside the curriculum course.

**645—61.18(157) Attendance requirements.** A school of cosmetology arts and sciences shall have a written, published attendance policy.

**61.18(1)** Schools shall ensure:

*a.* Students complete the hours required for each course of study set forth by rule 645—61.14(157).

*b.* Student attendance policies are applied uniformly and fairly.

*c.* Appropriate credit is given for all hours earned.

*d.* All retake tests, projects to be redone and make-up work are completed without benefit of additional hours earned. Time scheduled for such work will be scheduled at the school's discretion.

*e.* Hours or credit is not added to the accumulative student record as an award, or deducted from the accumulative student record as a penalty.

**61.18(2)** The school must maintain each student's attendance records for two years to verify that the minimum attendance standard set by the school is being met.

[ARC 8515B, IAB 2/10/10, effective 3/17/10]

**645—61.19(157) Accelerated learning.**

**61.19(1)** A school may adopt an accelerated learning policy which includes the acceptance of life experience, prior knowledge learned and test-out procedures.

**61.19(2)** If the school has an accelerated learning policy, the policy shall be a written, published policy that clearly outlines the criteria for acceptance and hours or credit granted or for test-out

procedures. The hours or credit granted for accelerated learning shall not exceed 15 percent of the student's entire course of study and shall be documented in the participating student's file.

*a.* After completion of all entrance requirements, a student may elect to sit for one or more academic written tests to evaluate the knowledge about subject matter gained from life experience or prior learning experience.

*b.* A student in a cosmetology arts and sciences course of study may be allowed to test out of a subject by sitting for final examinations covering the basic knowledge gained by a student who attends class sessions, or the school may accept and grant hours for prior or concurrent education and life experience.

*c.* A student who wishes to receive test-out credit or be granted hours for prior or concurrent education or life experience shall have maintained the academic grades and attendance policy standards set by the school.

*d.* The school may limit the number of times a student is allowed to sit for a test-out examination of a subject.

**645—61.20(157) Mentoring program.** Each cosmetology school must have a contract between the student, the school and the salon mentor that includes scheduling, liability insurance and purpose of the mentoring program.

**61.20(1)** Students shall not begin the mentoring program until they have completed a minimum of 50 percent of the total contact or credit hours and other requirements of the mentoring program established by the school.

**61.20(2)** Students may participate in a mentoring program for no more than 5 percent of the total contact or credit hours.

**61.20(3)** Students shall be under supervision of the mentor at all times. Students may perform the following: drape, shampoo, remove color and perm chemicals, remove perm rods, remove rollers, apply temporary rinses, apply reconditioners and rebuilders with the recommendation of the mentor, remove nail polish, file nails, perform hand and arm massage, remove cosmetic preparations, act as receptionist, handle retail sales, sanitize salon, consult with client (chairside manners), perform inventory, order supplies, prepare payroll and pay monthly bills, and hand equipment to the stylist.

**61.20(4)** The salon mentor's responsibilities include the following: introduce the student to the salon and the client, record the time of the student's attendance in salon, prepare evaluation, discuss performance, and allow the student to shadow.

**61.20(5)** A salon or school shall not compensate students when the students are participating in the mentoring program.

**645—61.21(157) Graduate of a school of cosmetology arts and sciences.**

**61.21(1)** A student shall be considered a graduate when the student has completed the required course of study and met the minimum attendance standard.

**61.21(2)** Students shall be given a final examination upon completion of the course of study but before graduation.

**61.21(3)** After passage of the final examination and completion of the entire course of study including all project sheets, students shall be issued a certificate of completion of hours required for the course of study.

**645—61.22(157) Records requirements.**

**61.22(1)** Each school of cosmetology arts and sciences shall maintain a complete set of student records. Individual student hours shall be kept on file at the school for two years following graduation.

**61.22(2)** Each school shall maintain daily teaching logs for all instructors, which shall be kept on file at the school for two years.

**61.22(3)** Prior to closure, the controlling school shall establish agreements with another school to maintain student and graduate transcripts and records. Prior to closure, the controlling school shall also notify the board in writing of the location of student records as established by the maintenance agreements

and shall submit a copy of the maintenance agreements to the board. Provisions in the agreement must include maintenance of student transcript records for a period of no less than two years.  
[ARC 8515B, IAB 2/10/10, effective 3/17/10]

**645—61.23(157) Classrooms used for other educational purposes.**

**61.23(1)** The licensed school of cosmetology arts and sciences shall not be used during scheduled instruction time or work experience time for any use other than for student instruction.

**61.23(2)** Persons attending other educational classes may not (en masse) pass through a classroom or clinic area while it is in use.

**61.23(3)** Noise level must not be disruptive to other classes.

**61.23(4)** Use of classrooms shall not usurp the space available for cosmetology instruction.

**645—61.24(157) Public notice.**

**61.24(1)** Advertisements shall indicate that all services are performed by students under the supervision of instructors.

**61.24(2)** A sign shall be clearly displayed in the entrance of the school that indicates in prominent lettering that students perform all services under the supervision of instructors.

These rules are intended to implement Iowa Code chapters 272C and 157.

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<sup>1</sup> March 17, 2010, effective date of 61.15(3) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 2010.



CHAPTER 134  
DISCIPLINE FOR MASSAGE THERAPISTS  
[Prior to 6/26/02, see 645—Ch 131]

**645—134.1(152C) Definitions.**

*“Board”* means the board of massage therapy.

*“Discipline”* means any sanction the board may impose upon licensees.

*“Licensee”* means a person licensed to practice as a massage therapist in Iowa.

**645—134.2(152C,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—134.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

**134.2(1) Fraud in procuring a license.** Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

*a.* False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

*b.* Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

**134.2(2) Professional incompetency.** Professional incompetency includes, but is not limited to:

*a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

*b.* A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

*c.* A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

*d.* Failure to conform to the minimal standard of acceptable and prevailing practice of a massage therapist in this state.

*e.* Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

*f.* Being adjudged mentally incompetent by a court of competent jurisdiction.

**134.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public.** Proof of actual injury need not be established.

**134.2(4) Practice outside the scope of the profession.**

**134.2(5) Use of untruthful or improbable statements in advertisements.** Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

**134.2(6) Habitual intoxication or addiction to the use of drugs.**

**134.2(7) Obtaining, possessing, attempting to obtain or possess, prescribing, selling, giving away, or administering controlled substances without lawful authority.**

**134.2(8) Falsification of client records.**

**134.2(9) Acceptance of any fee by fraud or misrepresentation.**

**134.2(10) Negligence by the licensee in the practice of the profession.** Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**134.2(11) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee’s ability to practice within the profession which**

includes, but is not limited to, a felonious act which is so contrary to honesty, justice or good morals and so reprehensible as to violate the public confidence and trust imposed upon the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**134.2(12)** Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

**134.2(13)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**134.2(14)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

**134.2(15)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**134.2(16)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

**134.2(17)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**134.2(18)** Failure to comply with a subpoena issued by the board, or failure to otherwise cooperate with an investigation of the board.

**134.2(19)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**134.2(20)** Failure to pay costs assessed in any disciplinary action.

**134.2(21)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**134.2(22)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**134.2(23)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a massage therapist.

**134.2(24)** Failure to report a change of name or address within 30 days after it occurs.

**134.2(25)** Representing oneself as a massage therapist when one's license has been suspended or revoked, or when one's license is on inactive status.

**134.2(26)** Permitting another person to use the licensee's license for any purpose.

**134.2(27)** Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

**134.2(28)** Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

- a. Verbally or physically abusing a client or coworker.
- b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.
- c. Betrayal of a professional confidence.
- d. Engaging in a professional conflict of interest.
- e. Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service or directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from a person, place, facility, or business in which the licensee has a financial interest.

**134.2(29)** Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

**134.2(30)** Practicing the profession while the license is under suspension, inactive or delinquent for any reason.

**134.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

[ARC 8620B, IAB 3/24/10, effective 4/28/10]

**645—134.3(147,272C) 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 licensee's 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—134.4(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 ensuring a high standard of professional care to the citizens of this state;
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; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

**645—134.5(152C) Civil penalties.**

**134.5(1)** Civil penalties may be imposed upon a person or business that employs an individual who is not licensed as a massage therapist. Civil penalties may be imposed upon a person or business that employs an individual who uses the initials "L.M.T." or the words "licensed massage therapist," "massage therapist," "masseur," or "masseuse," or any other words or titles which imply or represent that the employed person practices massage therapy but who is not licensed as a massage therapist. Failure to follow the above may result in:

- a. A civil penalty not to exceed \$1000 on a person or business that violates this rule:
  - (1) Each violation is a separate offense.
  - (2) Each day a continued violation occurs after citation by the board is a separate offense with the maximum penalty not to exceed \$10,000;
- b. The board's inspection of any facility which advertises or offers services purporting to be delivered by massage therapists;
- c. A citation being sent to the alleged violator by certified mail, return receipt requested; and
- d. The board's consideration of the following in determining civil penalties:
  - (1) Whether the amount imposed will be a substantial economic deterrent to the violation.
  - (2) The circumstances leading to or resulting in the violation.
  - (3) The severity of the violation and the risk of harm to the public.
  - (4) The economic benefits gained by the violator as a result of noncompliance.
  - (5) The welfare or best interest of the public.

**134.5(2)** Civil penalties may be imposed upon a person who is practicing as a massage therapist without a license. Civil penalties may be imposed upon a person who practices as an individual and uses the initials “L.M.T.” or the words “licensed massage therapist,” “massage therapist,” “masseur,” or “masseuse,” or any other words or titles which imply or represent that the person practices massage therapy but who is not licensed as a massage therapist. A person must be licensed as a massage therapist to practice in this state as a massage therapist. Failure to follow the above may result in:

- a. A civil penalty not to exceed \$1000 on a person who violates this rule:
  - (1) Each violation is a separate offense.
  - (2) Each day a continued violation occurs after citation by the board is a separate offense with the maximum penalty not to exceed \$10,000;
- b. The board’s inspection of any facility which advertises or offers services purporting to be delivered by massage therapists;
- c. A citation being sent to the alleged violator by certified mail, return receipt requested;
- d. The board’s consideration of the following in determining civil penalties:
  - (1) Whether the amount imposed will be a substantial economic deterrent to the violation.
  - (2) The circumstances leading to or resulting in the violation.
  - (3) The severity of the violation and the risk of harm to the public.
  - (4) The economic benefits gained by the violator as a result of noncompliance.
  - (5) The welfare or best interest of the public.

**134.5(3)** Issuing an order or citation.

- a. The board shall provide a written notice and the opportunity to request a hearing on the record.
- b. The hearing must be requested within 30 days of the issuance of the notice and shall be conducted according to Iowa Code chapter 17A.
- c. The board may, in connection with a proceeding under this subrule, issue subpoenas to require the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

**134.5(4)** Judicial review.

- a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.
- b. The board shall notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.
- c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.
- d. An action to enforce an order under this rule may be joined with an action for an injunction.

**134.5(5)** A person is not in violation of the statute or rules if that person practices massage therapy for compensation while in attendance at a school offering a curriculum meeting the requirements of 645—Chapter 132 and is under the supervision of a member of the school’s faculty.

**645—134.6(152C) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** Rescinded IAB 10/8/08, effective 11/12/08.

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

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CHAPTER 10  
IOWA VETERANS HOME  
[Prior to 2/29/84, Social Services[770] Ch 134]  
[Prior to 2/11/87, Human Services[498] Ch 10]  
[Prior to 1/20/93, Human Services[441] Ch 10]

PREAMBLE

The Iowa Veterans Home is a long-term health care facility located in Marshalltown, Iowa, operated by the Commission of Veterans Affairs.

**801—10.1(35D) Definitions relevant to Iowa Veterans Home.** The following definitions are unique to rules pertaining to the Iowa Veterans Home.

*“Acute alcoholic”* means any disturbance of emotional equilibrium caused by the consumption of alcohol resulting in behavior not currently controllable.

*“Acutely mentally ill”* means any disturbance of emotional equilibrium manifested in maladaptive behavior and impaired functioning caused by genetic, physical, chemical, biological, psychological, social or cultural factors which requires hospitalization.

*“Addicted to drugs”* means a state of dependency as medically determined resulting from excessive or prolonged use of drugs as defined in Iowa Code chapter 124.

*“Adjutant”* means the chief executive assistant of the commandant who functions as the chief operations officer.

*“Admissions committee”* means the committee appointed by the commandant to review applications to determine eligibility for admission and appropriate level and category of care.

*“Applicant”* means a person who is applying for admission into the Iowa Veterans Home.

*“Assets”* means items of value held by, or on behalf of, an applicant or member. Assets include, but are not limited to, cash, savings and checking accounts; stocks; bonds; contracts for sale of property; homestead or nonhomestead property. Nonrecurring windfall payments such as, but not limited to, inheritances; death benefits; insurance or tort claim settlements; and cash payments received from the conversion of a nonliquid asset to cash shall be considered assets upon receipt.

*“At once”* or *“timely”* means within ten calendar days.

*“Collaborative care plan”* means the plan of care developed for a member by the interdisciplinary resident care committee.

*“Commandant”* means the chief executive officer of the Iowa Veterans Home.

*“Commission”* means the Iowa commission of veterans affairs.

*“Continuously disruptive”* means any behavior, on a recurring basis, which has been documented by Iowa Veterans Home staff, that causes harm to a member or staff or conflicts with the member responsibilities set forth in subrule 10.12(1).

*“Countable asset”* means an asset to be considered in calculation of member support obligation.

*“Dangerous to self or others”* means any activity by a member which would result in injury to the member or others.

*“Dependent”* means a person for whose financial support an applicant or member is legally responsible or obligated.

*“Director of admissions”* means the public service executive responsible for the admissions process, benefits programming, and member financial affairs.

*“Director of resident and family services”* means the administrator responsible for social work services and chaplain services for members.

*“Diversion”* means income that is transferred to a spouse before the member support is determined.

*“DVA”* means the U.S. Department of Veterans Affairs.

*“Free time”* means 12 days of leave time each calendar year for which the member is not charged for care during absence.

*“Full support”* means the maximum daily rate of support times the billable days of care received in any month less any offsets.

*“Honorable discharge”* means separation or retirement from active military service. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility). Honorable discharge includes general discharges under honorable conditions.

*“Income”* means money gained by labor or service, or money paid periodically to an applicant or member. Income includes, but is not limited to, disability, retirement pensions or benefits; interest, dividends, payments from long-term care insurance, or other income received from investments; income from property rentals; certain moneys related to real estate contracts; earnings from regular employment or self-employment enterprises.

*“Interdisciplinary resident care committee”* or *“IRCC”* means the member, a social worker, a registered nurse, a dietitian, a medical provider, a recreation specialist and other staff, as appropriate, who are involved in reviewing a member’s assessment data and developing a collaborative care plan for the individual member.

*“IVH”* means the Iowa Veterans Home.

*“Legal representative”* for purposes of applicant or member personal and care decisions means durable power of attorney for health care, guardian, or next-of-kin (spouse, adult children, parents, adult siblings), as provided in Iowa Code chapters 144A, 144B, and 633. For applicant or member financial decisions, “legal representative” means conservator, power of attorney, fiduciary or representative payee.

*“Medical provider”* means a doctor of medicine or osteopathic medicine who is licensed to practice in the state of Iowa. Except as defined by Iowa law, a medical provider also means an advanced registered nurse practitioner or physician assistant who is licensed to practice in the state of Iowa.

*“Member”* means a patient or resident of IVH.

*“Member support”* means the dollar amount which is billed monthly to the member or legal representative for the member’s care.

*“PASARR”* means preadmission screening and annual resident review.

*“Resource”* means assets and income.

*“Spouse”* means a person of the opposite sex who is the legal or common-law wife or husband of a veteran.

*“Surviving spouse”* means a person of the opposite sex who is the legal or common-law widow or widower of a veteran.

*“Veteran”* means a person who served in the active military and who was discharged or released therefrom under conditions other than dishonorable. Honorable and general discharges qualify a person as a veteran. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility).

In addition, veteran includes a person who served in the merchant marine or as a civil service crew member between December 7, 1941, and August 15, 1945.

*“Voluntary discharge”* means a member wishes to terminate the member’s association with IVH on a permanent basis. This includes discharge for medical reasons which have been approved by a qualified medical provider. All other discharges are involuntary.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

**801—10.2(35D) Eligibility requirements.** Veterans and spouses of veterans shall be eligible for admission to IVH in accordance with the following:

**10.2(1)** Veterans shall be eligible for admittance to IVH in accordance with the following conditions:

*a.* The individual does not have sufficient means for the individual’s support, or the individual is disabled by reason of disease, wounds, old age or otherwise and is in need of one of the multilevels of care available at IVH and is unable to defray the expenses of the necessary care, except as described at paragraph “e.”

*b.* The individual cannot be employed on the day of admission.

*c.* The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

*d.* An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

*e.* Individuals who have sufficient means for their own care but who are otherwise eligible to become members of IVH may, if there is room for individuals described in paragraph “*a*” above, be admitted and allowed to remain at IVH upon payment of the cost of the individual’s care in accordance with rules 801—10.14(35D) to 801—10.23(35D).

*f.* The individual must be eligible for care and treatment at a DVA medical center (excluding financial eligibility).

*g.* Individuals admitted to the domiciliary level of care must meet DVA criteria stated in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, M-1, Part 1, Chapter 3.11(h) (1), (2), and (3), and have prior DVA approval if the individual’s income level exceeds the established cap.

**10.2(2)** Spouses and surviving spouses shall be admitted in accordance with the following:

*a.* The spouse or surviving spouse shall have been married to a veteran for at least one year preceding date of application or date of death of veteran.

*b.* The spouse of a veteran is eligible for admittance to IVH only if the veteran is admitted.

*c.* The surviving spouse of a deceased veteran is eligible for admittance to IVH if the deceased veteran would also be eligible for admittance to IVH if still living.

*d.* Spouses and surviving spouses admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

**10.2(3)** An individual who was not a member of the United States armed forces may be eligible for admittance in accordance with the limitations described in subrule 10.2(1), if the following conditions are met:

*a.* The individual was a member of the armed services of a nation with which the United States was allied during a time of conflict.

*b.* The individual is eligible for admission to a DVA medical center in accordance with U.S.C. Title 38, Chapter 17, Medical Care, Subchapter 2, Section 1710.

**801—10.3(35D) Application.** All applicants shall apply for admission to IVH in accordance with the following subrules:

**10.3(1)** All applicants shall make application to IVH through the county commission of veterans affairs in the applicant’s county of residence.

**10.3(2)** Application shall be made on the “Veteran Application for Admission to the Iowa Veterans Home,” Form 475-0409, or on the “Spouse’s Application for Admission to the Iowa Veterans Home,” Form 475-0410. Separate application shall be required for an eligible veteran and the spouse of the veteran when both veteran and spouse are applying for admission. The applications may be obtained at:

*a.* The county commission of veterans affairs’ office.

*b.* DVA medical centers located in or serving veterans in the state of Iowa.

*c.* IVH.

**10.3(3)** The applicant shall be scheduled for a physical examination by a medical provider, and the results of the examination shall be entered on the application by the examining medical provider. If the applicant has had a complete physical examination within three months of application, a copy of this physical shall suffice. Information must be authenticated by the medical provider’s original signature or electronic signature.

**10.3(4)** The following items shall be attached to the application before it is forwarded to IVH:

*a.* An affidavit signed by two members of the county commission of veterans affairs and notarized by the appropriate county official attesting to the best of their knowledge and belief that the applicant is a resident of that county and is an eligible applicant.

*b.* An original or a certified copy of the veteran’s honorable discharge from the armed forces of the United States.

- c.* If the applicant is a married or surviving spouse, a copy of the marriage certificate or evidence of a common-law marriage on which a prudent person would rely.
- d.* An original or a certified copy of applicant's birth certificate if not in receipt of Social Security.
- e.* A copy of divorce decrees or death certificate for the spouse, if applicable.
- f.* A completed "Personal Functional Assessment," Form 475-0837.
- g.* A completed "Supplement to Application for Admission to the Iowa Veterans Home," Form 475-0843.
- h.* A completed "Financial Affidavit," Form 475-0839.

**10.3(5)** Once the requirements of subrules 10.3(2), 10.3(3) and 10.3(4) have been met, the county commission of veterans affairs shall forward the completed application to the admissions office at IVH. No county shall require additional requirements for the application for admission beyond the requirements stated in these rules. Neither shall a county require additional forms to be filled out or provided by the applicant other than the forms required by these rules.

**10.3(6)** Eligibility determinations are subject to approval by the commandant.

#### **801—10.4(35D) Application processing.**

**10.4(1)** Applications received by the admissions office shall be reviewed for completeness. The county commission of veterans affairs shall be required to submit additional information if needed.

**10.4(2)** The admissions committee shall assign the level and category of care required by the applicant. If a special care unit or treatment is required, this shall be designated.

**10.4(3)** Regardless of whether or not the applicant can be immediately admitted, the applicant shall be notified by the director of admissions or designee of the applicant's designated level and category of care. An applicant who does not wish to be admitted to the designated level and category of care may submit evidence to show that another level or category of care may be more appropriate. However, once the admissions committee makes a final determination, the applicant who does not wish to be admitted under the designated level or category of care may withdraw the application in writing or have the application denied.

**10.4(4)** When space is not immediately available in the level and category of care assigned or on the appropriate special care unit, the applicant's name shall be placed on the appropriate waiting list for that level and category of care or special care unit in the order of the date the application was received.

**10.4(5)** When space is available at time of application, or when space becomes available in accordance with the designated waiting list, the applicant shall be scheduled for admittance to IVH as follows:

*a.* An applicant whose physical examination or personal functional assessment, or both if applicable, was completed more than three months prior to the scheduled date of admittance may be required to obtain another physical examination by a medical provider or complete a current personal functional assessment, or both if applicable. This information shall be reviewed to determine that the applicant is capable of functioning at the previously determined level of care and category.

*b.* An applicant who requires a different level and category of care than previously determined shall be admitted to the level of care required if a bed is available or shall have the applicant's name placed on the waiting list for the appropriate level and category of care in accordance with the date the original application was received.

*c.* If there is a question regarding the level and category of care for which the applicant qualifies, the applicant shall be scheduled for a preadmission examination with appropriate staff in order to make a determination of appropriate level and category of care. If there is a question of whether or not the applicant can be appropriately treated within the scope of existing programs or facility license or both, the applicant shall be scheduled for a preadmission screening by appropriate staff.

*d.* Following the applicant's admission to a nursing care unit, the PASARR is completed.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

**801—10.5(35D) Applicant's responsibilities.** Prior to admission to IVH, the applicant or a person acting on the applicant's behalf shall:

**10.5(1)** Report any change in the applicant's condition that could affect the previously determined level of care.

**10.5(2)** Report changes in mailing address, county or state of residency.

**10.5(3)** Provide additional information, verification or authorization for verification concerning the applicant's circumstances, condition of health, and resources if required.

**10.5(4)** Participate in a preadmission evaluation for level of care if required.

**801—10.6(35D) Admission to IVH.**

**10.6(1)** The applicant shall be notified by the director of admissions or designee to appear for admission to IVH.

**10.6(2)** Upon arrival at IVH, the applicant or legal representative shall report to the admissions office for an admission interview.

**10.6(3)** During the interview, the director of admissions or designee shall review the following items with the applicant or legal representative:

- a. The applicant's resources.
- b. The member support, billing process and banking services.
- c. The "Contractual Agreement," Form 475-0694.

**10.6(4)** In order to meet the requirements of subrule 10.6(3), the applicant or legal representative shall complete and sign the following forms as applicable:

- a. Permission for Treatment, Form 475-0814.
- b. Financial Affidavit, Form 475-0839.

**10.6(5)** An applicant becomes a member at that point in time when the applicant or legal representative signs and dates the "Contractual Agreement," Form 475-0694, or otherwise authorizes, in writing, acceptance of the terms of admittance specified in the Contractual Agreement.

**10.6(6)** Each member shall be placed on a unit providing the appropriate level and category of care based on individual needs.

a. A member requiring a change in placement based on individual care needs shall be transferred to a unit which provides the appropriate level and category of care within the scope of its licensure.

b. Members shall have priority over new admissions for placement on a unit when a vacant bed becomes available.

**10.6(7)** Care at IVH shall be provided in accordance with Iowa Code chapter 135C; 481—Chapter 57, Residential Care Facilities; 481—Chapter 58, Nursing Facilities; and DVA State Veterans Homes, Veterans Health Administration, M-5, Part 8, Chapter 2, 2.06, 2.07 and 2.09, November 4, 1992.

**801—10.7 to 10.10** Reserved.

**801—10.11(35D) Member rights.**

**10.11(1)** Member rights shall be in accordance with those listed in 481—Chapter 57 for members residing in the residential care facility level of care, 481—Chapter 59 for members residing in the nursing facility level of care, and those noted in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, pertaining to residents of state veterans homes.

**10.11(2)** A member has the right to share a room with the member's spouse when both member and spouse consent to the arrangement and both require the same level of care.

**10.11(3)** If a member is incompetent and not restored to legal capacity, or if the medical provider determines that a member is incapable of understanding and exercising these rights, the rights devolve to the member's legal representative.

**10.11(4)** In some cases, a member may be determined to be in need of a fiduciary or agent by the DVA, the Social Security Administration or by a similar funding source. In these cases the commandant or designee may serve as agent subject to Iowa Code section 135C.24. All rights and responsibilities regarding the financial awards shall devolve to the commandant or designee.

**801—10.12(35D) Member responsibilities.**

**10.12(1)** The member or legal representative has the responsibility:

- a.* To timely report the existence of or changes in the member's income, spouse's income, assets or marital status, including the conversion of nonliquid assets to liquid assets. The member shall also complete the change report which is enclosed with the monthly member support bill.
- b.* To apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, private pension programs, or any combination), and accept the available billing programs offered at IVH.
- c.* To provide information concerning the physical condition and, to the best of the member's knowledge, accurate and complete information concerning present physical complaints, past illnesses, hospitalizations, medications and other matters related to the member's health.
- d.* To report unexpected changes in the member's condition to the attending medical provider or other clinician.
- e.* To make it known if the member clearly comprehends a contemplated course of treatment and the member's role in that treatment. If a member feels that a particular treatment is of no benefit, the member is responsible for reporting this to staff so that other alternatives may be considered.
- f.* To participate in treatment planning, cooperate with the treatment team in carrying out the treatment plan, and to participate in the evaluation of the member's care.
- g.* To be considerate of the rights of other members and staff and control behavior in respect to smoking, noise, and number of visitors.
- h.* To treat other members and staff with dignity and respect.
- i.* To respect the property of other members, staff, and IVH. A member or legal representative may be held financially responsible for any property damaged or destroyed by the member.
- j.* To ask questions about anything that the member may not understand about the member's care or IVH.
- k.* To accept the consequences of the member's actions if the member refuses treatment or fails to follow prescribed care.
- l.* To follow the rules and regulations of IVH regarding member care and conduct as set out in subrule 10.40(1).
- m.* To keep scheduled appointments with staff. If unable to do so, the member is responsible for notifying appropriate staff.
- n.* To maintain personal hygiene, including clothing, and maintain personal living area based on the member's physical and mental capabilities.
- o.* To follow all fire, safety and sanitation regulations as established by IVH and applicable regulatory agencies.
- p.* To provide information and verification of resources. A member or legal representative must fulfill the member support obligation for member health care.
- q.* To carry Medicare Part B insurance if eligible. IVH shall buy the medical insurance portion of Medicare Part B if member is not eligible to receive Medicare Part B under Social Security.
- r.* To delegate to IVH the authorization to enroll the member in a prescription drug plan. The premium shall be deducted from the member's social security.

**10.12(2)** The member or legal representative is responsible for the full payment of the member's support charges within the calendar month that the monthly support bill is received. Failure to pay a monthly support bill within 30 days of issuance may result in discharge from IVH unless prior arrangements have been made.

**10.12(3)** In those instances when a legal representative is responsible for the handling of the member's resources, the legal representative shall keep any records necessary and provide all information or verification required for the computation of member support as set out in rule 801—10.14(35D). Failure of the legal representative to do so may result in the discharge of the member. In some cases, IVH may act to have the commandant or designee established as the member's fiduciary or agent as set out in subrule 10.11(4). In those cases when a guardian or conservator of a member fails to keep necessary records or provide needed information or verification or to meet the member support

obligation, IVH may notify the court of problems and request to establish another individual as guardian or conservator. The conservator of a member shall submit a copy of the annual conservatorship report to IVH.

**10.12(4)** When a member temporarily needs a level of care that is not offered by IVH, the member shall be referred by IVH medical staff to a DVA medical center or to another medical facility. When a member goes to a DVA medical center, that member is responsible for the payment of any DVA charges except those charges exempted by the commandant.

*a.* If a member who is treated at a DVA medical center has coinsurance to supplement Medicare, this coinsurance shall be used for the DVA medical center charges. IVH shall be responsible for all DVA medical center charges if the member does not carry coinsurance supplement.

*b.* If a member chooses a medical facility other than a DVA medical center or other medical facility as referred by IVH medical staff, the member is responsible for costs resulting from care at the medical facility chosen.

**801—10.13** Reserved.

**801—10.14(35D) Computation of member support.** As a condition of admittance to and residency in IVH, each member is required to contribute toward the cost of that member's care based on that member's resources and ability to pay.

**10.14(1)** A monthly member support bill shall be sent to the member or legal representative charging the member for care in the previous month with any necessary adjustment for prior months. A member may be required to pay member support charges from the member's liquid assets, long-term care insurance benefits, or from the member's income. The monthly member support charge shall be the billable days, as set out in subrule 10.14(3), multiplied by the appropriate per diem from rule 801—10.15(35D). This amount shall be reduced by any offsets as set out in subrules 10.15(2) and 10.15(3). The member or legal representative shall pay an amount not to exceed the amount calculated based on the resources available for the cost of care as set out in this chapter.

**10.14(2)** Title XIX residents. If a member is certified as eligible and participating in the Title XIX program, the amount of payment shall be determined by the department of human services income maintenance worker.

**10.14(3)** Billable days (non-Title XIX). Billable days for members not participating in the Title XIX program shall be counted as follows:

- a.* All days in the month for which the member received care (in-house).
- b.* All leave days in excess of the 12 free days up through the fifty-ninth leave day. Any leave days in excess of 59 days shall be considered billable, but the member must pay the full member support, not the amount determined by resources.
- c.* The first ten days of each hospitalization. On the eleventh day the member's bed shall be held without charge until the termination of hospital stay and member returns to IVH. A hospital stay may occur more than once in a calendar year.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

**801—10.15(35D) Per diems.**

**10.15(1)** For members not participating in the Title XIX program, the per diem by which the billable days shall be multiplied shall be established as follows:

- a. Nursing level of care.*
  - (1) The charge for care is the per diem submitted by IVH to department of human services for the Title XIX certified units as calculated in January and July of each year for the preceding six months.
  - (2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.
  - (3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.

*b. Domiciliary level of care.*

(1) The total cost of care per member shall be determined in January and July of each year for the preceding six months and calculated in a manner similar to the nursing level of care. This cost shall be the charge for care.

(2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.

(3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.

**10.15(2)** Veteran members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance for whom IVH receives a per diem from the U.S. DVA (under Title 38). IVH shall consider this per diem as a third-party reimbursement to the charge for care and shall be an offset to the member support bill. The offset of the per diem received (billed to DVA) shall be shown as an offset for the month billed. The provisions of 38 U.S.C. 1745(a), which were established by Section 211 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Public Law 109-461), set forth a mechanism for paying a higher per diem rate for certain veterans who have service-connected disabilities and are receiving nursing home care in state homes.

**10.15(3)** For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The daily per diem charge shall be reduced by an amount equal to the “usual” Medicare premium calculated as a per diem. This offset shall be available only to members eligible for Medicare insurance.

**10.15(4)** For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The member support charge shall be reduced in accordance with subrules 10.15(2) and 10.15(3), if applicable. The member shall then contribute all remaining available resources up to the charge for care.

Members receiving DVA pension and aid and attendance shall be considered as having used the amount equal to aid and attendance first in payment for their care at IVH.

**10.15(5)** Payment of support is due on the tenth of the month in which the monthly support bill is received, or ten business days after the member’s last income deposit for that month.

*a.* If payment is not received by IVH within 30 days following the due date, a notice of discharge may be issued.

*b.* If there are extenuating circumstances, the member or legal representative should meet with the commandant or designee to work out a schedule of payments.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

**801—10.16(35D) Assets.** The following rules specify the treatment of assets, as defined in rule 801—10.1(35D), in the payment of member support as described in rule 801—10.14(35D). Only liquid assets shall be considered in the payment of member support.

**10.16(1)** For members living on Title XIX certified units who have applied for and are eligible to receive Title XIX medical assistance, rule 441—75.5(249A) shall apply. Financial eligibility for Title XIX shall be determined by the department of human services income maintenance worker.

**10.16(2)** For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance, the following rules apply:

*a. Assets considered.* The assets considered shall include all assets owned by the member, or if married, both the member and the spouse living in the community, except for the following:

(1) The homestead is exempt as follows: The exempt homestead is defined as the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. Contiguous means that portions of the homestead cannot be separated from the home by intervening property owned by others. However, the homestead is considered contiguous if portions of it are separated from the home only because of roads or other public rights-of-way. Property that is not exempt as part of the homestead shall be treated in accordance with the rules of this chapter.

The homestead, as defined, can retain its exempt status for a period of time not to exceed 36 months, while the member, spouse and dependents are temporarily absent, provided the following conditions are met:

1. There is a specific purpose for the absence.
2. The member, spouse or dependents intend to return to the homestead when the reason for the absence has been accomplished.
3. The member, spouse or dependents can reasonably be expected to return to the home during the 36-month time limitation.
4. If a person is an applicant at the time the homestead becomes vacant due to the absence of the applicant, spouse or dependents, the first month of the 36-month period is the month of admission to IVH.
5. If a person is a member when the homestead becomes vacant due to the absence of the member, spouse or dependents, the first month of the 36-month period is the month following the month in which the homestead is vacated.
6. Any homestead that does not qualify for this exemption or any homestead that is vacant for a period of time exceeding the 36-month limit shall be treated in accordance with subrule 10.16(3).
  - (2) Household goods, personal effects and motor vehicles.
  - (3) The value of any burial spaces held for the purpose of providing a place for the burial of the member, spouse or any other member of the immediate family.
  - (4) Exempt income-producing property includes, but is not limited to, tools, equipment, livestock, inventory and supplies, and grain held in storage.
  - (5) Other property essential to the means of self-support of either the member or spouse as to warrant its exclusion under the Supplemental Security Income program.
  - (6) Assets of a blind or disabled person who has a plan for achieving self-support as determined by the division of vocational rehabilitation or the department of human services.
  - (7) Assets of Native Americans belonging to certain tribes arising from judgment fund and payments from certain land and subsurface mineral rights.
  - (8) Any amounts arising from Public Law 101-239 which provides assistance to veterans under the Agent Orange product liability litigation.
  - (9) Assistance under the Disaster Relief Act and Emergency Assistance Act or other assistance provided pursuant to federal statute as a result of a presidential disaster declaration and interest earned on these funds for the nine-month period beginning on the date these funds are received or for a longer period where good cause is shown.
  - (10) An amount that is irrevocable and separately identifiable, not in excess of \$8514 principal, without an itemized billing, for the member or spouse to meet the burial and related expenses of that person.
  - (11) Federal assistance paid for housing occupied by the spouse living in the community.
  - (12) Assistance from a fund established by a state to aid victims of crime for nine months from receipt when the client demonstrates that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.
  - (13) Relocation assistance provided by a state or local government to a member or spouse comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which is subject to the treatment required by Section 216 of the Act.
  - (14) Any other asset excluded by statute.
- b. Assets of a single member.* When liquid assets not exempted in paragraph "a" above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.
- c. Assets of a married member with spouse in a care facility.* If a member's spouse is residing in a nursing facility, including IVH, the member shall be treated as a single member for asset determination

purposes. If the spouse is residing in a residential care facility, the rules pertaining to a spouse living in the community apply.

*d. Assets of a married member with spouse living in the community.* When liquid assets not exempted in paragraph “a” above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

The assets attributed to the member shall be determined from the documented assets of both the member and spouse living in the community as of the first day of admission to IVH. All resources of both the member and the spouse shall be added together. If the total resources are less than \$24,000 (the amount set by 441 IAC 75.5(3) “d” and “f,” Public Law 100-365 and Public Law 100-485), then that amount shall be protected for the spouse living in the community. If applicable, the next \$24,000 shall be awarded to the member. Any resources over \$48,000 shall be split one-half to the member and one-half to the spouse up to a predetermined amount set by the department of human services. All resources over the predetermined amount shall be awarded to the member. Other resources attributed to the spouse living in the community shall be determined by the department of human services through the attribution process.

(1) If the member has transferred assets to the spouse living in the community under a court order for the support of the spouse, the amount transferred shall be the amount attributed to the spouse to the extent it exceeds the specified limits above.

(2) After the month in which the member is admitted, no attributed resources of the spouse living in the community shall be deemed available to the member during the continuous period in which the member is at IVH. Resources which are owned wholly or in part by the member and which are not transferred to the spouse living in the community shall be counted in determining member support. The assets of the member shall not count for member support to the extent that the member intends to transfer and does transfer the assets to the spouse living in the community within 90 days.

(3) Report of results. The department of human services shall provide the member and spouse and legal representative, if applicable, a report of the results of the attribution. The report shall state that either has a right to appeal the attribution in accordance with rule 801—10.45(35D).

*e. Exception based on estrangement.* When it is established by a disinterested third-party source and confirmed by the commandant or designee that the member is estranged from the spouse living in the community, member support shall be determined on the basis of resources of a single member.

**10.16(3)** When a member owns an available, nonliquid, nonexempt asset, the value of which would affect the computation of member support as described in rule 801—10.14(35D), the asset shall be liquidated. The value of that asset shall be considered in the computation of member support. The following paragraphs are to be considered when liquidating assets:

*a.* Net market value, or equity value, is the gross price for which property or an item can be sold on the open market less any legal debts, claims or liens against the property or item. IVH shall consider the condition and location of an item or property and local market conditions in determining the gross sales price of the item or property. In order for a loan or claim to be considered a lien or encumbrance against an asset, the loan or claim must be made under circumstances that result in the creditors having a recorded legal right to satisfy the debt.

*b.* An asset must be available in order for it to be treated in accordance with the rules of this chapter. An asset is considered available when:

(1) The member owns the property in part or in full and has control over it; that is, it can be occupied, rented, leased, sold or otherwise used and disposed of at the member’s discretion; and

(2) The member has a legal interest in a liquidated sum and has the legal ability to make the sum available for member support.

*c.* A member must take all appropriate action to gain title and control of any asset of which the value would affect the computation of member support.

*d.* The value of the asset may be adjusted if the member or legal representative:

(1) Advertises the asset for sale, through appropriate methods, on a continual basis.

- (2) Lists the asset with a real estate broker or other agent appropriate to the asset.
  - (3) Asks a reasonable price which is consistent with the asking price of similar items of property in the community.
  - (4) Does not refuse a reasonable offer.
  - (5) Does not sell the asset for an unreasonably low price.
  - e. Cash proceeds from the sale of an asset, conversion of an asset to cash, or receipt of any cash asset as defined in rule 801—10.1(35D) shall be used in the computation of member support beginning with the calendar month of receipt.
- [ARC 8014B, IAB 7/29/09, effective 7/10/09]

**801—10.17(35D) Divestment of assets.**

**10.17(1)** “Intentional divestment of assets” means:

- a. To knowingly sell, give or transfer by member or legal representative for less than fair market value, any asset, the value of which would affect member support; or
- b. To knowingly and voluntarily place an asset, the value of which would affect member support, under a trust or other legal instrument that ends or limits the availability of that asset.

**10.17(2)** Transfers of resources shall be presumed to be divestiture unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose. In addition to giving away or selling assets for less than fair market value, examples of transferring resources include, but are not limited to, establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource or any other transfer as defined in the Supplemental Security Income program.

- a. Convincing evidence to establish that the transaction was not a divestiture may include documents, letters, and contemporaneous writings, as well as other circumstantial evidence.
- b. In rebutting the presumption that the transfer was a divestiture, the burden of proof is on the individual to establish:
  - (1) The fair market value of the compensation;
  - (2) That the compensation was provided pursuant to an agreement, contract, or expectation in exchange for the resource; and
  - (3) That the agreement, contract, or expectation was established at the time of transfer.

**10.17(3)** An applicant or legal representative shall not knowingly and intentionally divest an asset, as set out in subrule 10.17(1), within the period established by Title XIX statute prior to admission, with the intention of reducing the applicant’s member support or of obtaining admission to IVH.

When it is determined by the commandant or designee that an applicant did intentionally divest an asset, upon admission that applicant shall be charged member support as if divestment did not occur.

**10.17(4)** A member or legal representative shall not knowingly and intentionally divest an asset, as described in subrule 10.17(1), while a member with the intention of reducing the member support.

When it is discovered that a member or legal representative improperly divested an asset(s), that member shall be charged member support as if divestment did not occur.

**801—10.18(35D) Commencement of civil action.** The commandant or designee may file a civil action for money judgment against a member or discharged member or the member’s legal representative for support charges when the member or discharged member fails to pay member support in accordance with 801—Chapter 10.

**801—10.19(35D) Income.** This rule describes the treatment of income, as defined at rule 801—10.1(35D), in the computation of member support as described at rule 801—10.14(35D).

**10.19(1)** For members living on Title XIX certified units who are eligible for Title XIX medical assistance, rule 441—75.5(249A) shall apply. For those members participating in the Title XIX medical assistance program, the difference between the \$140 personal needs allowance and the Title XIX personal needs allowance shall be returned to the member out of individual member participation.

**10.19(2)** For members living on units which are not Title XIX certified and members living on Title XIX certified units who are not eligible for Title XIX, the following shall apply:

- a.* The following types of income are exempt in the computation of member support:
- (1) The earned income of the spouse or dependents.
  - (2) Unearned income restricted to the needs of the spouse or dependents (Social Security, DVA, etc.).
  - (3) Any other income that can be specifically identified as accruing to the spouse or dependents.
  - (4) Nonrecurring gifts, contributions or winnings, not to exceed \$60 in a calendar quarter.
  - (5) Interest income of less than \$20 per month from any one source.
  - (6) State bonus for military services.
  - (7) Any earnings received by a member for that member's participation in money-raising activities administered by veterans organizations or auxiliaries.
  - (8) Any money received by a member from the sale of items constructed or grown at IVH as part of a therapy program.
  - (9) The first \$150 received by a member in a month for participation in the incentive therapy or other programs as described at rule 801—10.30(35D), for members in the domiciliary level of care. For members in the nursing level of care, the first \$75 shall be exempted.
  - (10) Personal loans.
  - (11) In-kind contributions to the member.
  - (12) Title XIX payments.
  - (13) Yearly DVA compensation clothing allowance for those who qualify.
  - (14) Other income as specifically exempted by statute.
  - (15) Any income similar in its origin to the assets excluded in subparagraphs 10.16(2) "a"(6) and (7).
  - (16) Income from participating as outlined in the community reentry program (IVH policy #265A) or the IVH discharge planning policy (IVH policy #265).
- b.* Personal needs allowance. All members shall have a monthly income intended to cover the purchase of clothing and incidentals.
- (1) All income up to the first \$140 shall be kept as a personal needs allowance.
  - (2) The personal needs allowance shall be subtracted from the member's income prior to determination of moneys to which the spouse may be entitled.
- c.* Any type of income not specifically exempted shall be considered for the payment of member support as provided in rule 801—10.14(35D).
- d.* Determining income from property.
- (1) Nontrust property. Where there is nontrust property, income paid in the name of one person shall be available only to that person unless the document providing income specifies differently. If payment of income is in the name of two persons, one-half is attributed to each. If payment is in the name of several persons, the income shall be considered in proportion to their ownership interest. If the member or spouse can establish different ownership by a preponderance of evidence, the income shall be divided in proportion to the ownership.
  - (2) Trust property. Where there is trust property, the payment of income shall be considered available as provided in the trust. In the absence of specific provisions in the trust, the income shall be considered as stated above for nontrust property.
- e.* The amount of income to consider in the computation of member support shall be as follows:
- (1) Regular monthly pensions and entitlements. The amount of income to be considered is the amount of the monthly entitlement or pension received.
  - (2) Investments or nonrecurring lump-sum payments. Net unearned income from investments or nonrecurring lump-sum payments shall be determined by deducting income-producing costs from the gross unearned income. Income-producing costs include, but are not limited to, brokerage fees, property manager's salary, maintenance costs and attorney fees.
  - (3) Property sold on contract. The amount of income to consider shall be the amount received minus any payments for mortgage, taxes, insurance or assessments still owed on the property.

(4) Earned income from a rental, sole or partnership enterprise. The amount of income to consider shall be the net profit figure as determined for the Internal Revenue Service on the member's income tax return.

EXCEPTION: The deductions of the previous year's state and federal taxes and depreciation on the income tax return are not allowable deductions for the purpose of the computation of member support. If a tax return is not available, the member or legal representative shall provide all information and verification needed in order to correctly compute member support.

(5) Partnership income. The member's share of the net profit shall be determined in the same manner as the partnership percentage as determined for Internal Revenue Service's purposes.

**10.19(3)** Member income diversion to dependent spouse not living at IVH. A portion of the member's income shall be diverted to the spouse according to the following:

*a.* Spouse living in the community. One-half the income in exclusion of an amount equal to aid and attendance and after reduction of personal needs allowance.

*b.* Spouse in another nursing home not on Title XIX. The same amount as a spouse living in the community in accordance with paragraph 10.19(3) "a."

*c.* Spouse in nursing home on Title XIX. Member shall be treated as single. If member is in receipt of DVA pension, the amount of income provided Title XIX spouse would be the DVA pension dependency amount.

*d.* Spouses living in a residential care facility. Spouses shall be treated under the same rules as a spouse living in the community in accordance with paragraph 10.19(3) "a."

*e.* All current court order proceedings and guardian/conservatorship appointments regarding financial obligations, except child support or alimony, shall be honored.

**10.19(4)** Income disbursements.

*a.* All monthly diversions to spouse or valid court orders shall be mailed as designated or on a monthly basis.

*b.* All checks shall be mailed no later than the eighth day of any given month to proper recipient or, at IVH's option, five business days after the member's last income deposit for that month.

*c.* Monthly income disbursements to a community spouse may be delayed or canceled if there is an overdue amount owed for support payments.

[ARC 7890B, IAB 7/1/09, effective 7/1/09]

### **801—10.20(35D) Other income.**

**10.20(1)** When a member receives regular monthly payments of unearned income, it shall be included in the resources available for the payment of member support.

**10.20(2)** When a member receives periodic recurring income which is received less frequently than monthly, this countable income, after the deduction of any allowable income-producing expenses, shall be considered in the month received.

**10.20(3)** When a member receives a nonrecurring retroactive payment from a specific entitlement source for a prior period of time, it shall be considered as income in the month received. The aid and attendance amount of the DVA pension shall be computed as a manual adjustment (available to member due to IVH nursing care).

**10.20(4)** Income from a particular source is considered terminated as of the date the member receives the last income payment from that source or the date that a sole or partnership enterprise ends, whichever is later.

**10.20(5)** When income from a particular source decreases in a calendar month, the decrease in income shall be considered in the computation of that month's member support. Income from a particular source is considered to be decreased as of the date the member receives the first income payment in the decreased amount.

**10.20(6)** When income from a particular source increases in a month, the increase in income shall be considered in the computation of that month's member support. Income from a particular source is considered to be increased as of the date the member receives the first income payment in the increased amount.

**10.20(7)** Recurring lump-sum payments shall be treated as income in the month received.

**10.20(8)** Nonrecurring lump-sum payments earned prior to admission, regardless of when received, shall not be counted as income but may be considered as an available liquid asset.

**10.20(9)** Any income as defined in rule 801—10.20(35D) that exceeds the member support billing for that month shall thereafter be considered a liquid asset available under rule 801—10.16(35D).

**10.20(10)** Through IVH programs, employment is only allowed in the community reentry program (IVH policy #265A) or the IVH discharge planning policy (IVH policy #265).

**801—10.21(35D) Fraud.** Applicants, members or legal representatives who knowingly conceal the existence of resources may be subject to the billing of full member support, discharge for failure to pay for member's care or denial of admission. Further, members who knowingly conceal liquid assets or income which would have affected member support shall be charged for the amount not previously billed due to the fraudulent act. If upon admission it is determined that medical or other pertinent information provided during the application process was fraudulent, notice of discharge may be issued. In addition, any applicant, member or legal representative suspected of fraud may be referred to the department of inspections and appeals, division of investigations, for possible criminal or civil action. The attorney general's office shall conduct the investigation.

**801—10.22(35D) Overcharges.** When it is discovered that a member was charged for support in excess of the amount actually due, the member shall receive a refund or credit to the member's account. If the member is discharged or deceased, a refund shall be conveyed to the member or legal representative.

**801—10.23(35D) Penalty.**

**10.23(1)** All members who have resources in excess of the full support rate shall be charged the full member support rate. If any member does not apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, or any combination), fails to report resources accurately in order to not pay full support, or refuses to accept the available billing programs offered at IVH, that member shall be charged up to full member support as if these responsibilities had been followed. Failure to comply with these rules may result in discharge from IVH.

**10.23(2)** If a member is required to pay full member support under these rules, the monthly charge shall be calculated as the per diem in paragraph 10.15(1) "a" or 10.15(1) "b" times the billable days less any offsets. The only exception to this monthly charge will be the additional amount of aid and attendance in the DVA retroactive payment for the time period of nursing care at IVH. This amount, in total, shall be due regardless of resources available. If a member is required to pay member support based on additional resources, these figures shall be obtained from the appropriate agencies.

**801—10.24 to 10.29** Reserved.

**801—10.30(35D) Incentive therapy and nonprofit rehabilitative programs.** Members may be offered the opportunity to perform services for IVH through the incentive therapy program as part of their plan of care. Participating members shall be compensated for their involvement in the incentive therapy program according to applicable guidelines established by the U.S. Department of Labor, Wage, and Hour Division, and the commandant or designee if members enrolled in nonprofit rehabilitative programs receive an income from such programs, that income shall be treated in the same manner as the incentive therapy program or IVH policy.

This rule is intended to implement Iowa Code section 35D.7(3).

**801—10.31 to 10.34** Reserved.

**801—10.35(35D) Handling of pension money and other funds.** Each member who has not been assigned a guardian, conservator, fiduciary or representative payee or has not designated a power of attorney while competent or as otherwise specified, may manage that member's own personal financial affairs. Upon the receipt of written authorization from the member or legal representative to the

commandant or designee, the commandant or designee may assist the member in the management of the member's financial affairs.

**10.35(1)** Pension money or other funds deposited with IVH are not assignable except as specified at subrule 10.19(3) or 10.40(2) "b"(1).

**10.35(2)** If authorized by a member, the commandant or designee may act on behalf of that member in receiving, disbursing, and accounting for personal funds of the member received from any source subject to the requirements of Iowa Code section 135C.24. The authorization may be given or withdrawn in writing by the member or legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

**10.35(3)** IVH shall maintain a commercial account with a federally insured bank for the personal deposits of its members. The account shall be known as the IVH membership account. The commandant or designee shall record each member's personal deposits individually and shall deposit the funds in the membership account where the members' deposits shall be held in the aggregate. Interest shall accrue on those accounts that are on deposit the last working Friday of each month.

**10.35(4)** If authorized in writing by the member or legal representative, the commandant or designee may make withdrawals against that member's personal account to pay regular bills and other expenses incurred by the member. The authorization may be given or withdrawn in writing by the member or legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

**10.35(5)** The commandant or designee shall maintain a written record of each member's funds which are received by or deposited with IVH. The member or legal representative shall receive a monthly statement showing deposits, withdrawals, disbursements, interest and current balances. If the commandant or designee is made representative payee for the member's financial transactions, this statement shall be maintained in the member's administrative file.

**10.35(6)** Except as otherwise specified, funds deposited with IVH shall be released to the member or legal representative upon request with a statement showing deposits, disbursements, interest, and the final balance at the time the funds are withdrawn. When the member continues to maintain residency at IVH, the funds shall be released and statement provided within three working days following the request. When a member is being discharged from IVH, the funds shall be released and a statement provided no later than the tenth day of the month following the month of discharge.

**10.35(7)** Upon the death of a member with personal funds deposited with IVH, IVH must convey promptly the member's funds to any outstanding funeral home bill, the individual paying last funeral expenses, or whoever is administering the member's estate. If probate papers are produced, a final accounting of those funds must also be provided to the individual administering the member's estate. If the value of the member's estate is so small as to make the granting of administration inadvisable, IVH must hold, then deliver all money plus interest within one year to the proper heirs equally or adhere to the member's request in the member's last will and testament.

This rule is intended to implement Iowa Code sections 35D.11(2) and 35D.12(2).

### **801—10.36(35D) Leave, bed holds and 96-hour passes.**

#### **10.36(1) *Non-Title XIX members.***

*a.* Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge/Leave Against Medical Advice," Form 475-0940.

*b.* Leaves are required if the member expects to be absent past midnight.

*c.* All leaves other than free time shall require payment of member support charges as though the member were in residency. Failure to pay regular member support charges shall result in discharge of the member. Leave length may be changed by notification from the member or legal representative to the nursing unit social worker or domiciliary office.

*d.* Hospital leaves. Leaves spent in approved medical facilities away from IVH shall not be counted against the 59-day leave time limit as set out in paragraph 10.14(3) "b."

Hospital leaves shall be granted and the charges for such leaves shall be as follows: During the first ten days of any hospital stay, the member shall pay the regular and usual assessed charge of the level of care of the bed held. Beginning on the eleventh day through the remainder of the hospitalization, the member shall not be charged. Each monthly member support bill shall reflect any adjustments related to hospitalization. Members discharged while on leave from IVH shall have the account closed before the first of the month following the discharge.

Leaves to other medical facilities for the purpose of treatment shall be treated as hospital leaves.

*e.* General leaves.

(1) Twelve days of leave time each calendar year shall be free time.

(2) The member shall be charged the usual support charge for leave time over 12 days up to and including 59 days.

(3) The member shall be charged the full member support for the level of care in which the member resides for leave time over 59 days.

(4) Leave time is not cumulative from one calendar year to another calendar year.

(5) Leave time the member has not utilized or cannot utilize shall not be credited toward the member's support.

(6) Support charges for the member on leave who wishes to retain the member's room or bed shall be due and payable as though the member were in residency as set forth in paragraph 10.36(1) "c."

*f.* When the nursing care member is on leave, the member shall remain on in-house status for the first 12 leave days per calendar year for DVA per diem purposes and IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

*g.* When a member has used 12 non-hospital leave days, IVH is not financially responsible for any medical charges for the member while on leave.

**10.36(2)** *Members who are receiving Title XIX benefits.*

*a.* Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge/Leave Against Medical Advice," Form 475-0940.

*b.* A leave as set out in paragraph 10.36(1) "b" is required if a member expects to be absent past midnight.

*c.* The member's bed shall be held while the member is visiting away from IVH for a period not to exceed 18 days in any calendar year. There is no restriction as to the amount of days taken in any one month or during any one visit, as long as the days taken in the calendar year do not exceed 18. Additional days shall be allowed if the member's medical provider recommends in the plan of care that additional days would be rehabilitative.

*d.* A member or a legal representative who wishes to exceed the 18 visitation days and retain the member's bed, but does not have medical provider recommendation for an extension, must make arrangements with the director of admissions or designee for payment of the rate determined by the department of human services income maintenance worker for all days in excess of the 18 visitation days. If prior arrangements and payment are not made, a member may be discharged in accordance with subrule 10.12(2).

*e.* A bed shall be held for a hospitalized member. The member's client participation shall be paid according to the department of human services' income maintenance worker for all hospitalized days until member returns or is discharged.

*f.* IVH is not financially responsible for any medical charges for the member when visiting away from IVH.

**10.36(3)** *Ninety-six-hour passes for domiciliary members.*

*a.* A pass shall not exceed 96 hours. If a member expects to be gone for more than 96 hours, a leave is required.

*b.* Upon return from a pass, the member must spend 24 hours in residence before another pass is issued.

*c.* When a member is on pass, the member shall remain on in-house status for DVA per diem purposes; IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.  
[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 8417B, IAB 12/30/09, effective 2/3/10]

**801—10.37 to 10.39** Reserved.

**801—10.40(35D) Requirements for member conduct.** The commandant shall administer and enforce all requirements for member conduct. Subject to these rules and Iowa Code section 135C.23, the commandant may transfer or discharge any member from IVH when the commandant determines that the health, safety or welfare of the members or staff is in immediate danger, and other reasonable alternatives have been exhausted.

**10.40(1)** In addition to the member responsibilities as set out in rule 801—10.12(35D), each member shall also comply with the following requirements:

*a.* The use of intoxicants or alcoholic beverages on IVH premises is prohibited unless prescribed by a medical provider.

*b.* The bringing of alcoholic beverages or illicit substances on IVH premises is prohibited. Any illicit substances or drug paraphernalia or both found in the member's possession shall be grounds for immediate discharge.

*c.* The use of illegal substances while a member of IVH is prohibited. A urinalysis shall confirm the presence of illegal substances. A member's refusal to submit to a urinalysis in response to a request based on probable cause shall be considered a positive result and is grounds for discharge.

*d.* Firearms or weapons of any nature shall be turned in to the adjutant or designee for safekeeping. The adjutant or designee shall decide if an instrument is a weapon. Firearms or weapons in the possession of a member which constitute a hazard to self or others shall be removed and stored in a place provided and controlled by the facility.

*e.* Smoking in members' rooms is prohibited. Members who smoke shall do so within designated smoking areas so as not to endanger self or others.

*f.* Continuously disruptive behavior on the part of a member, such as fighting with other members, visitors or staff, assault or theft, is grounds for transfer or discharge.

*g.* Members shall comply with legal requests and orders of the commandant or designee.

*h.* Members shall not violate state and federal statutes.

*i.* Members shall report to the director of admissions or designee any changes in assets/income, and pay support by the tenth of each month.

**10.40(2)** When a member is found in violation of the requirements of conduct established in subrule 10.40(1), the following steps may be taken:

*a.* For a first offense, a member is counseled by an appropriate staff person and options for correcting the behavior are considered. Options may include but are not limited to:

(1) Funds restriction.

(2) Substance abuse treatment.

(3) Mental health services.

*b.* IVH control of the member's personal funds as follows:

(1) The pension money and other incomes and available liquid assets shall be deposited by the commandant or designee in a separate account for and on behalf of the member. The commandant or designee shall, under the procedures established in subrules 10.35(3) and 10.35(4), make withdrawals and disbursements to meet the regular bills and other expenses of the member.

(2) If, after a period of up to six months, the member's behavior is deemed appropriate by the facility, the handling of funds will be reviewed, and funds may be returned to the member.

(3) If the member is discharged from IVH, the balance of the deposit shall be paid to the member or financial legal representative within 30 days of discharge.

*c.* For a second offense, a member is offered the services above and is placed on probation that warns a third offense may lead to discharge.

*d.* For a third offense, discharge from IVH in accordance with subrule 10.40(3).

**10.40(3)** The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member's violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. If the IRCC, in conjunction with the medical provider and mental health personnel, deems that the member's behavior poses a threat of imminent danger, the commandant may issue notice of an immediate involuntary discharge. In such an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

The member's county commission of veterans affairs and the legal representative shall be informed in writing of the decision to discharge. Written notification shall also be issued to appropriate governmental agencies including the commission, the department of inspections and appeals, and the department on aging's long-term care ombudsman to ensure that the member's health, safety or welfare shall not be in danger upon the member's release.

**10.40(4)** A member who has been previously discharged under the provisions of subrule 10.40(2) or 10.40(3) shall be readmitted to IVH only upon the approval of the commandant or designee. If not approved, the applicant shall receive written notice of the denial. A copy of the denial notice shall be forwarded to the commission and the appropriate county commission of veterans affairs. Any decision to deny readmittance is subject to the review of the commission.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

**801—10.41(35D) County of settlement upon discharge.** A member does not acquire legal settlement in the county in which IVH is located unless the member is voluntarily or involuntarily discharged from IVH, continuously resides in the county for a period of one year subsequent to the discharge and during that year is not readmitted to IVH and does not receive any services from IVH.

**801—10.42(35D) Disposition of personal property and funds.**

**10.42(1)** A discharged member shall remove all personal property at the time of discharge or within 30 days. Personal property not removed within 30 days after discharge shall become the property of IVH to dispose of as the commandant or designee directs. Personal property may be forwarded at the member's expense to the member's last-known address. When the member is discharged from IVH, the member's funds shall be released to the member or legal representative with a statement provided no later than the tenth day of the month following the month of discharge.

**10.42(2)** Following written notification to the legal representative or first next of kin, a deceased member's personal property remaining at IVH 30 days after written notification shall become the property of IVH to dispose of as the commandant or designee directs. If there is a known legal representative or first next of kin, the property may be shipped to the legal representative or first next of kin at the expense of the estate, legal representative, or first next of kin.

**10.42(3)** Upon death of a member with personal funds deposited at IVH, IVH shall convey the member's funds with a final statement to the legal representative administering the member's estate. When an estate is not opened or in cases where no executor is appointed, IVH shall attempt to locate the deceased member's heirs and deliver the funds and property to the heirs within one year after date of death.

**801—10.43(35D) Rule enforcement—power to suspend and discharge members.** The commandant shall administer and enforce all rules adopted by the commission, including rules of discipline and, subject to these rules, may immediately suspend the membership of and discharge any member from IVH for infraction of the rules when the commandant determines that the health, safety or welfare of the members of IVH is in immediate danger and other reasonable alternatives have been exhausted. The suspension and discharge are temporary pending action by the commission. Judicial review of the action of the commission may be sought in accordance with Iowa Code chapter 17A.

**10.43(1)** The commandant shall, with the input and recommendation of the IRCC, involuntarily discharge a member for any of the following reasons:

*a.* The member has been diagnosed with a substance use disorder but continues to abuse alcohol or an illegal drug in violation of the member's conditional or provisional agreement entered into at the time of admission, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

1. Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

2. By having been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1) "a," if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged under paragraph 10.43(1) "a" if the member's actions or behavior jeopardizes the life or safety of other members or staff.

*b.* The member refuses to utilize the resources available to address issues identified in the member's collaborative care plan, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and the member has been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1) "b," if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged if the member's actions or behavior jeopardizes the life or safety of other members or staff.

*c.* The member's medical or life skills needs have been met to the extent possible through the services provided by IVH and the member no longer requires a residential or nursing level of care, as determined by the IRCC.

*d.* The member requires a level of licensed care not provided at IVH.

**10.43(2) Provisions for member following discharge from IVH.**

*a.* If a member is discharged under this rule, the discharge plan shall include placement in a suitable living situation which may include but is not limited to a transitional living program approved by the commission or a living program provided by DVA.

*b.* If a member is involuntarily discharged under this rule, the commission shall, to the greatest extent possible, ensure against the member being homeless and ensure that the domicile to which the member is discharged is fit and habitable and offers a safe and clean environment which is free from health hazards and provides appropriate heating, ventilation and protection from the elements.

**10.43(3) Discharge notice, including right to appeal.** An involuntary discharge of a member under this rule shall be preceded by a written notice to the member. The notice shall state that, unless the discharge is an immediate discharge due to the member's actions or behavior which jeopardizes the life or safety of other members or staff, the effective date of the discharge is 30 calendar days from the date of receipt of the discharge notice, and that the member has the right to appeal the discharge. In addition, the discharge notice shall contain:

*a.* The stated reason for the proposed discharge or transfer.

*b.* The actual effective date of the proposed discharge or transfer.

*c.* A statement in not less than 12-point type which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as "Commission") within five (5) calendar days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held, and a decision rendered within ten (10) calendar days of the filing of the appeal. Provision

may be made for extension of the ten (10) day requirement upon request to the Commission designee. If you lose the hearing, you will not be discharged or transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five (5) days following final decision of such hearing. To request a hearing or receive further information, call the Commission or write to the Commission to the attention of Chairperson, Commission of Veterans Affairs.”

**10.43(4)** Emergency discharge. In the case of an emergency transfer or discharge relating to a threat of imminent harm, the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident’s file, and it must contain all the information required by 10.43(3). In addition, the notice must contain a statement in not less than 12-point type (elite), which reads: “You have a right to appeal the facility’s decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as ‘Commission’) within 5 calendar days after receiving this notice. If you request a hearing, it will be held and a decision rendered within 10 calendar days of the filing of the appeal no later than 14 days after receipt of your request by the Commission. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, you may call the Commission or write to the Commission to the attention of: Chairperson, Commission of Veterans Affairs.”

**10.43(5)** Appeal by member.

*a.* If a member appeals the discharge under this rule, the member shall be provided with the information relating to the appeals process as specified in rule 801—10.47(35D).

*b.* If a member appeals the discharge under this rule, the involuntary discharge appeal process in rule 801—10.47(35D) shall apply.

**10.43(6)** By the fourth Monday of each session of the general assembly, the commandant shall submit a report annually to the senate veterans affairs committee and the house veterans affairs committee specifying the number, circumstances and placement of each member involuntarily discharged from IVH under this rule during the previous calendar year.

**10.43(7)** Any involuntary discharge by the commandant under this rule shall comply with the rules adopted by the commission and by the department of inspections and appeals pursuant to 2009 Iowa Acts, Senate File 407, section 2.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 8417B, IAB 12/30/09, effective 2/3/10]

**801—10.44** Reserved.

#### APPEAL PROCESS

**801—10.45(35A,35D) Applicant appeal process.** An applicant who believes that any of the provisions of 801—Chapter 10 have not been upheld, or have been upheld unfairly, may file an appeal directly with the commandant containing a statement of the grievance and requested action. The commandant shall investigate and may hold an informal hearing with the applicant and other involved individuals. Subrules 10.46(4) to 10.46(8) apply subsequently. The commandant shall notify the applicant of the decision in writing within ten working days of receipt of the grievance.

**801—10.46(35A,35D) Member appeal process.** A member who believes that any of the provisions of 801—Chapter 10 have not been upheld or have been upheld unfairly may file an appeal.

**10.46(1)** A member shall discuss the problem and action desired with the assigned social worker within five working days of the incident which caused the problem. The social worker shall investigate the situation and attempt to resolve the problem within five working days of the discussion with the member. If the assigned social worker has allegedly caused the grievance, the member may file the grievance directly with the director of resident and family services.

**10.46(2)** If unable to resolve the problem, or if the member is dissatisfied with the solution, the social worker shall assist the member with filing a formal grievance and shall submit a report of the facts and recommendations to the director of resident and family services within five working days of

the discussion with the member. The director of resident and family services shall inform the member of the decision in writing within five working days of receipt of the social worker's report.

**10.46(3)** If the member is not satisfied with the decision of the director of resident and family services, or if no decision is given within the time specified in subrule 10.46(2), the member may appeal to the commandant within ten working days of the decision of the director of resident and family services or, if no decision is given, within ten working days of the time limit specified in subrule 10.46(2). The grievance shall be submitted in writing and contain a statement of the cause of the grievance and requested action. A copy of the decision of the director of resident and family services shall be attached to the grievance statement, if applicable. The commandant shall investigate the grievance and may hold an informal hearing with the member, director of resident and family services, and other involved individuals. The commandant shall notify the member and the director of resident and family services of the decision in writing within ten working days of receipt of the grievance.

**10.46(4)** If the member is not satisfied with the decision of the commandant, or if no decision is given within the time limits specified in subrule 10.46(3), the member may appeal to the commission within ten working days of the commandant's decision. The member and commandant shall be notified in writing within five working days of the commission's receipt of the appeal. The commission shall schedule a hearing with the member, commandant, and other involved individuals to determine the facts and make a final decision.

**10.46(5)** The member may appoint any individual to represent the member in the appeal process, at the member's expense.

**10.46(6)** No reprisals of any kind shall be taken against a member for filing an appeal.

**10.46(7)** The member may obtain judicial review of the commission's final decision in accordance with Iowa Code chapter 17A.

**10.46(8)** The time limits specified in the above subrules may be extended when mutually agreed upon by the persons involved in the appeal process.

Rules 801—10.45(35A,35D) and 801—10.46(35A,35D) are intended to implement Iowa Code subsection 35A.3(4) and Iowa Code chapter 35D.

**801—10.47(35D) Involuntary discharge appeal.** When a member appeals an involuntary discharge, the following provisions shall apply:

**10.47(1)** The member shall file the appeal with the commission within 5 calendar days of receipt of the discharge notice.

**10.47(2)** The commission shall conduct a contested case proceeding in accordance with the uniform rules on contested case proceedings found in 801—Chapter 8. The rules in 801—Chapter 8 are adopted by reference with the following amendment: The presiding officer must be a member of the commission and cannot be an administrative law judge with the department of inspections and appeals.

**10.47(3)** The commission shall render a decision on the appeal and notify the member of the decision in writing within 10 calendar days of the filing of the appeal.

**10.47(4)** If the member is not satisfied with the decision of the commission, the member may appeal the commission's decision by filing an appeal with the department of inspections and appeals within 5 calendar days of being notified in writing of the commission's decision.

**10.47(5)** The department of inspections and appeals shall render a decision on the appeal of the commission's decision and notify the member of the decision in writing within 15 calendar days of the filing of the appeal with the department.

**10.47(6)** The maximum time period that shall elapse between receipt by the member of the discharge notice and actual discharge shall not exceed 55 days which includes the 30-day discharge notice period and any time during which any appeals to the commission or the department of inspections and appeals are pending.

**10.47(7)** If a member is not satisfied with the decision of the department of inspections and appeals, the member may seek judicial review in accordance with Iowa Code chapter 17A. A member's discharge under rule 801—10.43(35D) shall not be stayed while judicial review is pending.

[**ARC 8014B**, IAB 7/29/09, effective 7/10/09; **ARC 8417B**, IAB 12/30/09, effective 2/3/10; **ARC 8635B**, IAB 3/24/10, effective 4/28/10]

**801—10.48** and **10.49** Reserved.

#### GROUPS AND FACILITY ADMINISTRATION

**801—10.50(35D) Visitors.** Visitors are welcome to IVH subject to the following conditions:

**10.50(1)** Member visitation hours are from 8 a.m. to 11 p.m. daily. Visiting hours may be extended on an individual basis with the approval of the commandant or designee.

**10.50(2)** Visitors are subject to the policies and procedures as established by IVH rules.

**10.50(3)** Tours of IVH may be arranged by contacting the commandant or designee.

**10.50(4)** Firearms, drugs, or alcoholic beverages are permitted on IVH grounds only with the permission of the commandant or designee.

**10.50(5)** Any disruptive behavior on the part of a visitor shall result in modification, denial or termination of visiting privileges.

**10.50(6)** Trespass. Visitors shall not enter IVH grounds with the intent to commit a public offense, remain upon the grounds or in IVH buildings without justification after being notified or requested to abstain from entering, or to remove or vacate therefrom by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of IVH and its grounds.

**10.50(7)** Any visitor violating any of the rules within this chapter may be restricted from IVH for a period of time to be determined by the commandant or designee.

**801—10.51(35D) Mail.**

**10.51(1)** Each competent member shall be afforded a choice in the methods of handling the member's business mail and in meeting the member's responsibilities for reporting resources for computation of member support purposes. A member found to be mentally incompetent shall have that member's business mail handled in a manner as to respect that member's dignity and still meet the needs of IVH for complete information regarding resources.

**10.51(2)** Each competent member shall be allowed to handle that member's business mail to the degree of responsibility chosen by the member. A member may:

*a.* Elect to receive all business mail personally and provide the admissions office with financial documentation, or

*b.* Designate that the member shall receive personal mail items, but business mail received at IVH from entitlement sources or concerning assets shall be routed to the director of admissions or designee.

**801—10.52(35D) Interviews and statements.**

**10.52(1)** Releases to the news media shall be the responsibility of the commandant or designee. Authority for dissemination and release of information shall be designated to other persons at the discretion of the commandant or designee.

**10.52(2)** Interviews of members within IVH by the news media or other outside groups are permitted only with the prior written consent of the member to be interviewed or the member's legal representative. At the request of the person or group who wishes to conduct an interview, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

**801—10.53(35D) Donations.** Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the commandant or designee. The commandant or designee shall evaluate the donation in terms of the nature of the contribution to the facility program. The commandant or designee shall be responsible for accepting the donation and reporting the gift to the commission. All monetary gifts shall be acknowledged in writing to the donor.

**801—10.54(35D) Photographing and recording of members and use of cameras.**

**10.54(1)** Photographs and recordings of members within IVH by news media or other outside groups are permitted only with the prior written consent of the member to be photographed or recorded, or the member's legal representative. At the request of the person or group who wishes to make photographs or recordings, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

**10.54(2)** Every effort shall be made to preserve the inherent dignity of the member and to preclude exploitation or embarrassment of the member or the family of the member.

**801—10.55(35D) Use of grounds and facilities.**

**10.55(1)** Persons wishing to use the facilities and grounds for civic purposes, programs for members, meetings, and similar purposes, must contact the commandant or designee at least two weeks in advance of the requested date. The commandant or designee may disapprove a request when the requested facilities are scheduled for use by or for the members, or when the activity would disrupt the normal operation of IVH. Previous arrangements to use the facilities or grounds may be canceled by the commandant or designee in the event of an emergency or when changes in the schedule require the use of the facilities or grounds for the members. Persons who use the facilities or grounds shall be held responsible for leaving the facilities or grounds in satisfactory condition and for any damages caused by or resulting from use.

**10.55(2)** Members of outside organizations permitted to use facilities or grounds shall observe the same rules as visitors to the facility.

**801—10.56(35D) Nonmember use of cottages.** Cottages may be made available to persons on the staff of IVH or to other members of the public with the commandant's approval and at the established rate.

**10.56(1)** Expenses incurred as a result of damage or need for exceptional cleaning/sanitizing procedures, or both, may result in additional charges to the visitor as determined by IVH.

**10.56(2)** Posted occupancy capacities shall not be exceeded and may be grounds for denial of use.

**10.56(3)** Pets are not allowed inside the cottages without prior authorization. Visitors who bring pets must comply with IVH rules regarding pet health and safety. Visitors may maintain portable pet kennels outside.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

**801—10.57(35D) Operating motor vehicles on grounds.**

**10.57(1)** The operator of a motor vehicle shall have a valid license for the type of vehicle being driven upon IVH grounds.

**10.57(2)** All persons operating a motor vehicle on IVH grounds shall comply with the applicable state and local laws and IVH policies.

**10.57(3)** No driver of a motor vehicle or motorcycle shall disobey the instructions of any traffic-control device, warning, or sign placed.

**10.57(4)** No person shall drive any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of person or property. The person operating the motor vehicle or motorcycle shall have same under control and shall reduce the speed to 20 miles per hour on IVH grounds and reduce the speed to a lower, reasonable rate when approaching and passing a person walking in the traveled portion of a street.

**10.57(5)** No person shall stop, park, or leave standing any type vehicle in established fire lanes, emergency vehicle areas, and other essential lanes. No person shall park any type vehicle on roadways.

**10.57(6)** No person shall leave any type vehicle unattended by not locking doors or removing keys.

**10.57(7)** Failure to comply with rules may cause limitation or curtailment of driving privileges on IVH grounds for an indefinite period.

**10.57(8)** Motor vehicles belonging to members may be parked in member-designated parking on IVH grounds.

This chapter is intended to implement Iowa Code subsection 35A.3(4) and chapter 35D.

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**LABOR SERVICES DIVISION[875]**

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

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CHAPTER 218

EMPLOYEES EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR  
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## ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

## CHAPTER 65

## ELEVATOR SAFETY BOARD ADMINISTRATIVE AND REGULATORY AUTHORITY

**875—65.1(89A) Definitions.** The definitions contained in this rule apply to 875—Chapters 65 to 73.

“*Board*” means the elevator safety board.

“*Board office*” means the offices of the division of labor services of the department of workforce development.

“*Commissioner*” means the labor commissioner of the state of Iowa.

“*Conveyance*” means an elevator, construction personnel hoist, dumbwaiter, escalator, moving walk, lift or inclined or vertical wheelchair lift subject to regulation under Iowa Code chapter 89A, and includes hoistways, rails, guides, and all other related mechanical and electrical equipment.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—65.2(89A) Purpose and authority of board.** The purpose of the board is to perform statutory duties pursuant to Iowa Code chapter 89A. The mission of the board is to protect the public health, safety and welfare relating to the safe and proper installation, repair, maintenance, alteration, use, and operation of conveyances in the state. The authority and responsibilities of the board include, but are not limited to:

**65.2(1)** Adopting rules necessary to protect public health, safety and welfare and to administer the duties of the board.

**65.2(2)** Hearing and deciding appeals concerning inspection reports that relate to the installation, operation, and maintenance of conveyances in the state.

**65.2(3)** Hearing and deciding appeals concerning actions by the commissioner to deny, suspend or revoke operating permits.

**65.2(4)** Establishing fees.

**65.2(5)** Establishing committees of the board, the members and chairpersons of which shall be appointed by the board chairperson.

**65.2(6)** Performing any other function authorized by law.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—65.3(21,89A) Organization of board.**

**65.3(1)** The board shall be composed of the commissioner or the commissioner’s designee and eight additional members appointed by the governor and confirmed by the senate.

**65.3(2)** The eight appointed members of the board shall include:

*a.* Two representatives from an elevator manufacturing company or its authorized representative.

*b.* Two representatives from elevator servicing companies.

*c.* One building owner or manager.

*d.* One representative employed by a local government in this state who is knowledgeable about building codes in this state.

*e.* One representative of workers actively involved in the installation, maintenance, and repair of elevators.

*f.* One licensed mechanical engineer.

**65.3(3)** The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the commissioner nor the commissioner’s designee may serve as chairperson. The chairperson shall, when present, preside at meetings, appoint committees, and perform all duties and exercise all powers of the chairperson. The vice chairperson shall, in the absence or incapacity of the chairperson, perform all duties and exercise all powers of the chairperson.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—65.4(21,89A) Public meetings.**

**65.4(1)** The board shall hold at least one meeting each calendar quarter.

**65.4(2)** Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings shall be conducted in accordance with Robert's Rules of Order.

**65.4(3)** The chairperson or the chairperson's designee shall prepare an agenda listing all matters to be discussed at the meeting.

**65.4(4)** A majority of the members of the board shall constitute a quorum, and all final motions and actions must receive a majority of a quorum vote.

**65.4(5)** Members of the public may be present during board meetings unless the board votes to hold a closed session in accordance with Iowa Code chapter 21. The dates and locations of board meetings may be obtained from the division of labor's Web site or the board office.

**65.4(6)** At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person when a particular topic comes before the board may be granted at the discretion of the chairperson. The chairperson may limit total public comment time to ten minutes.

**65.4(7)** The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

**65.4(8)** Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—65.5(89A) Official communications.** All official communications, including submissions and requests, shall be addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code chapters 21 and 89A.

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

**875—66.1(17A,89A) Waivers of rules.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**875—66.2(17A,89A) Applicability of rule.** The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

**875—66.3(17A,89A) Criteria for waiver or variance.** In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

**66.3(1)** The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

**66.3(2)** The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

**66.3(3)** The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;

**66.3(4)** Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and

**66.3(5)** There is a reasonable relationship between the age of the conveyance and the variance requested.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—66.4(17A,89A) Filing of petition.** A petition for a waiver must be submitted in writing to the board as follows:

**66.4(1) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

**66.4(2) Other.** If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

**66.4(3) Filing petition.** A petition is deemed filed when it is received in the board's office. A petition should be sent to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The petitioner shall submit the petition and all related materials for consideration at least three weeks prior to a scheduled board meeting for board review of the petition at the meeting.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—66.5(17A,89A) Content of petition.** The required form for a petition for waiver or variance is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. A petition for waiver shall include the following information where applicable and known to the petitioner:

**66.5(1)** The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

**66.5(2)** A description of and citation to the specific rule from which a waiver is requested.

**66.5(3)** The specific waiver requested, including the precise scope and duration.

**66.5(4)** The relevant facts that the petitioner believes would justify a waiver under each of the five criteria described in rule 875—66.3(17A,89A). This statement shall include a signed statement from the

petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

**66.5(5)** A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the conveyance affected by the proposed waiver.

**66.5(6)** Information regarding the board's action in similar cases.

**66.5(7)** The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

**66.5(8)** The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

**66.5(9)** The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

**66.5(10)** Signed releases of information authorizing persons with knowledge regarding the petition to furnish the board with information relevant to the petition for waiver.

**66.5(11)** The state identification number of the conveyance.

**66.5(12)** The age of the conveyance.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—66.6(17A,89A) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the board related to the waiver request.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—66.7(17A,89A) Notice.** The board shall acknowledge a petition within ten days of its receipt in the board office. The board shall ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

**875—66.8(17A,89A) Board review procedures.**

**66.8(1)** Unless the board makes other arrangements, petitions for waiver will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting.

**66.8(2)** The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

**875—66.9(17A,89A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

**875—66.10(17A,89A) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**66.10(1) Board discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each

petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

**66.10(2) *Burden of persuasion.*** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

**66.10(3) *Narrowly tailored exception.*** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**66.10(4) *Administrative deadlines.*** When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**66.10(5) *Conditions.*** The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

**66.10(6) *Time period of waiver.*** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impractical. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

**66.10(7) *Time for ruling.*** The board shall grant or deny a petition for a waiver as soon as practical but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**66.10(8) *When deemed denied.*** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

**66.10(9) *Service of order.*** Within 14 days of the ruling, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**66.10(10) *Posting of orders granting waivers.*** The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the machine room corresponding to the conveyance. The order or a copy of the order granting a waiver that relates to a conveyance that does not have a machine room shall be posted in a protective sleeve attached to the inside of the controller cabinet door corresponding to the conveyance.

**875—66.11(17A,89A) *Public availability.*** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders contain information the board is authorized or required to keep confidential, the board may instruct the board office to accordingly redact confidential information from petitions or orders prior to public inspection.

**875—66.12(17A,89A) *Summary reports.*** Summary information identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests shall be included in semiannual reports prepared by the board. Copies of this report shall be provided to the administrative rules coordinator and the administrative rules review committee.

**875—66.13(17A,89A) *Cancellation of a waiver.*** A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

**66.13(1)** The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

**66.13(2)** The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

**66.13(3)** The subject of the waiver order has failed to comply with all conditions contained in the order.

**875—66.14(17A,89A) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**875—66.15(17A,89A) Defense.** After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the specific conveyance to which the order pertains in any proceeding in which the rule in question is sought to be invoked.

**875—66.16(17A,89A) Judicial review.** Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 22, and 89A.

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CHAPTER 67  
ELEVATOR SAFETY BOARD PETITIONS FOR RULE MAKING

**875—67.1(17A,89A) Petitions for rule making.** Any person or agency may file a petition for rule making with the board requesting the adoption, amendment or repeal of a rule. The required form for a petition for rule making is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. The petition shall be filed at the location specified in rule 875—65.5(89A). A petition is deemed filed when it is received by the board office. The board office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be in writing and provide the following information where applicable and known to the petitioner:

**67.1(1)** A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

**67.1(2)** A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

**67.1(3)** A brief summary of petitioner's arguments in support of the action urged in the petition.

**67.1(4)** A brief summary of any data supporting the action urged in the petition.

**67.1(5)** The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.

**67.1(6)** The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**67.1(7)** The board may deny a petition because it does not provide the required information. The petitioner may file a new petition on the same subject that seeks to eliminate the grounds for the board's rejection.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—67.2(17A,89A) Briefs.** The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

**875—67.3(17A,89A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**875—67.4(17A,89A) Board review procedures.**

**67.4(1)** Unless the board makes other arrangements, petitions for rule making will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

**67.4(2)** The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

**67.4(3)** Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by

regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date the board office mails the required notification to the petitioner.

**67.4(4)** Denial of a petition because it does not contain the required information does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 89A.

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CHAPTER 68  
DECLARATORY ORDERS BY THE ELEVATOR SAFETY BOARD

**875—68.1(17A,89A) Petition for declaratory order.** Any person may file at the board's offices a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose.

**68.1(1)** The required form for a petition for declaratory order is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. The petition must be in writing and provide the following information where applicable and known to the petitioner:

- a. A clear and concise statement of all relevant facts on which the order is requested.
- b. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
- c. Clear and concise questions the petitioner wants the board to answer.
- d. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
- e. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
- f. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.
- g. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.

**68.1(2)** The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—68.2(17A,89A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 875—68.6(17A,89A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

**875—68.3(17A,89A) Intervention.**

**68.3(1)** A person who qualifies under any applicable provision of law as an intervenor and who files a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**68.3(2)** At the board's discretion, a person who files a petition for intervention more than 20 days after the filing of a petition for declaratory order but prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order.

**68.3(3)** A petition for intervention shall be filed at the board office. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

- a. A petition for intervention must be in writing and provide the following information where applicable and known to the requester:
  - (1) Facts supporting the intervenor's standing and qualifications for intervention.
  - (2) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
  - (3) Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

(4) A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

(5) The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

(6) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

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

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—68.4(17A,89A) Briefs.** The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

**875—68.5(17A,89A) Inquiries.** Inquiries concerning the status of a declaratory order may be made at the board office.

**875—68.6(17A,89A) Service and filing of petitions and other papers.**

**68.6(1)** *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**68.6(2)** *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

**68.6(3)** *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rules 875—69.10(17A,89A) and 875—69.11(17A,89A).

**875—68.7(17A,89A) Board review procedures.**

**68.7(1)** Within 30 days after receipt of a petition for a declaratory order, the board shall issue a document that does one of the following:

- a.* Declares the applicability of the statute, rule or order to the specified circumstances,
- b.* Sets the matter for specific proceedings,
- c.* Agrees to issue a declaratory order by a specified time, or
- d.* Declines to issue a declaratory order and sets forth the reasons for its actions as provided in subrule 68.9(1).

**68.7(2)** The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

**68.7(3)** The petitioner and all intervenors shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—68.8(17A,89A) Action on petition.** Rescinded IAB 3/24/10, effective 4/28/10.

**875—68.9(17A,89A) Refusal to issue order.**

**68.9(1)** The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a.* The petition does not provide the required information.
- b.* Rescinded IAB 3/24/10, effective 4/28/10.
- c.* The board does not have jurisdiction over the questions presented in the petition.
- d.* The questions presented by the petition are also presented in a current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.
- e.* The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f.* The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g.* There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h.* The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.
- i.* The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
- j.* The petitioner requests the board to determine whether a statute is unconstitutional on its face.

**68.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

**68.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—68.10(17A,89A) Contents of declaratory order—effective date.** In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

**875—68.11(17A,89A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**875—68.12(17A,89A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]

[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]



CHAPTER 69  
CONTESTED CASES BEFORE THE ELEVATOR SAFETY BOARD

**875—69.1(17A,89A) Reconsideration of inspection report.** The owner or operator of a piece of equipment subject to a written inspection report may petition the commissioner for reconsideration of the report within 30 days of the issuance of the report. Failure to seek timely reconsideration of the inspection report from the commissioner shall be deemed a waiver of all appeal rights under Iowa Code section 89A.13(5). The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and codes adopted by reference rests upon the petitioning owner or operator.

**69.1(1)** A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. A petition for reconsideration shall specify:

- a. The party seeking reconsideration, including mailing address and telephone number;
- b. The location of the equipment subject to the challenged inspection report;
- c. The inspection date;
- d. The inspector who issued the challenged inspection report;
- e. The specific findings or conclusions to which exception is taken;
- f. The relief sought.

**69.1(2)** A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all relevant documents that the petitioning party desires the commissioner to consider when evaluating the petition.

**69.1(3)** The commissioner or a designee of the commissioner is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the commissioner deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the commissioner to discover documents or other information that was not submitted with the petition for reconsideration.

**69.1(4)** Any petition for reconsideration that is not received by the office of the commissioner within 30 days of the issuance of the challenged inspection report shall be deemed untimely and will not be considered by the commissioner.

**69.1(5)** The commissioner shall not consider any request for waiver or variance of an administrative rule made as part of a petition for reconsideration. Requests for waivers or variances of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 66.

**69.1(6)** The commissioner shall issue a written ruling on the petition for reconsideration. In ruling on a petition for reconsideration, the commissioner may:

- a. Affirm the inspection report as issued;
- b. Issue an amended inspection report;
- c. Rescind the inspection report;
- d. Deny the petition as untimely.

**69.1(7)** Any petition for reconsideration that is not ruled upon by the commissioner within 20 days of receipt by the office of the commissioner shall be deemed denied by the commissioner and the challenged inspection report shall be considered affirmed as issued.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—69.2(17A,89A) Appeal to the board.** A decision by the commissioner to deny, suspend, or revoke an operating permit; a decision by the commissioner to deny a petition for reconsideration; and a deemed denial of a petition for reconsideration are subject to appeal to the board. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal to the board is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. An appeal to the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A. The commissioner shall have an automatic right of intervention in any appeal and shall defend the ruling in a contested case proceeding. The deadlines for filing an appeal are set forth below:

**69.2(1)** *Reconsideration of an inspection report.* An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner's written ruling on a petition for reconsideration or the deemed denial of a petition for reconsideration.

**69.2(2)** *Notification of intent to deny, suspend, or revoke an operating permit.* An appeal must be filed in writing with the board within 30 calendar days of the appellant's receipt of the notification of intent to deny, suspend, or revoke an operating permit.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—69.3(17A,89A) Informal review.** If the appellant requests and the commissioner does not object, the board may conduct an informal review of the facts and circumstances subject to the provisions of this rule.

**69.3(1)** In order to preserve the ability of board members to participate in decision making, parties who desire participation in an informal review must therefore waive their right to seek disqualification of a board member based solely on the board member's participation in the informal review. Parties would not be waiving their right to seek disqualification on any other ground. By electing to participate in informal review, a party accordingly agrees that a participating board member is not disqualified from acting as a presiding officer in a later contested case proceeding.

**69.3(2)** The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

**69.3(3)** Rules 875—69.4(17A,89A) through 875—69.31(17A,89A) do not apply during informal review.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—69.4(17A,89A) Delivery of notice.** Delivery of the notice of hearing by the board constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the appellant, the appellant's attorney, if known, and the commissioner.

**875—69.5(17A,89A) Contents of notice.** The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. The notice shall contain a statement that it is the appellant's burden on appeal to prove compliance with all applicable statutory provisions, administrative rules, and ASME code sections. The notice shall also contain a reference to the applicable statute and rules.

**875—69.6(17A,89A) Scope of issues.** Only those issues raised by the petitioner in the petition for reconsideration will be preserved for appeal to the board in an appeal from the denial of a petition for reconsideration or an appeal from the deemed denial of a petition for reconsideration.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—69.7(17A,89A) File transmitted to the board.** Within 30 days of the issuance of a notice of hearing, the commissioner shall forward to each board member and all parties of record to the appeal copies of the applicable documents set forth below:

1. Inspection report,
2. Petition for reconsideration with the appellant's attachments,
3. Documents obtained by the commissioner in ruling on the petition for reconsideration,
4. Commissioner's ruling on the petition for reconsideration, and
5. Appeal to the board.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—69.8(17A,89A) Legal representation.** Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

**875—69.9(17A,89A) Presiding officer.**

**69.9(1)** The presiding officer in all contested cases shall be the board, a panel of board members, or an administrative law judge assigned by the department of inspections and appeals. When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 69.9(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

**69.9(2)** Any party to a contested case that wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

- a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e. Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.
- f. The request was not timely filed.
- g. The request is not consistent with a specified statute.

**69.9(3)** The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and to issue a proposed decision in a contested case shall have a J.D. degree unless this requirement is waived by the board.

**69.9(4)** The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

**69.9(5)** All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 875—69.26(17A,89A) and 875—69.27(17A,89A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

**69.9(6)** Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members shall have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

**875—69.10(17A,89A) Service and filing.**

**69.10(1)** *Service—when required.* Except where otherwise provided by law, when a document is filed in a contested case proceeding, it shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

**69.10(2)** *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by personal delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**69.10(3)** *Filing—when required.* All documents that are required to be served upon a party shall be filed simultaneously with the board.

**69.10(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board at the location set forth in rule 875—65.5(89A), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**69.10(5) Proof of mailing.** Proof of mailing includes either:

- a. A legible United States Postal Service postmark on the envelope;
- b. A certified mail return receipt;
- c. A notarized affidavit; or
- d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(Date)

(Signature)

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—69.11(17A,89A) Time requirements.**

**69.11(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**69.11(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**875—69.12(17A,89A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

**875—69.13(17A,89A) Telephone and electronic proceedings.** The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

**875—69.14(17A,89A) Disqualification.**

**69.14(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

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

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

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

**69.14(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 69.25(7).

**69.14(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**69.14(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 69.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

**69.14(5)** If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

**69.14(6)** If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 875—69.26(17A,89A) and seek a stay under rule 875—69.30(17A,89A).

#### **875—69.15(17A,89A) Consolidation and severance.**

**69.15(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- a.* The matters at issue involve common parties or common questions of fact or law;
- b.* Consolidation would expedite and simplify consideration of the issues involved; and
- c.* Consolidation would not adversely affect the rights of any of the parties to those proceedings.

**69.15(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

#### **875—69.16(17A,89A) Discovery.**

**69.16(1)** Pursuant to Iowa Code chapter 17A, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**69.16(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the presiding

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

**875—69.17(17A,89A) Subpoenas in a contested case.** Pursuant to Iowa Code section 17A.13, subsection 1, the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

**69.17(1)** Upon the written request of a party, the presiding officer shall issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

**69.17(2)** A request for a subpoena shall include the following information, as applicable:

- a. The name, address and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other evidence requested;
- f. The date, time and location for production, or inspection and copying.

**69.17(3)** Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other evidence the person is commanded to produce;
- g. The date, time and location for production, or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address and telephone number of the presiding officer;
- j. The date of issuance;
- k. A return of service attached to the subpoena.

**69.17(4)** The presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

**69.17(5)** Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

**69.17(6)** Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

**69.17(7)** A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

**69.17(8)** If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—69.18(17A,89A) Motions.**

**69.18(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**69.18(2)** Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**69.18(3)** The presiding officer may schedule oral argument on any motion.

**69.18(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

**69.18(5)** Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 875—69.29(89A) and appeal pursuant to subrule 69.27(3).

**875—69.19(17A,89A) Settlements.** A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless the parties waive this prohibition.

**875—69.20(17A,89A) Prehearing conference.**

**69.20(1)** Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

**69.20(2)** Each party shall bring to the prehearing conference:

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

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

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

**69.20(3)** In addition to the requirements of subrule 69.20(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters that the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters that will expedite the hearing.

**69.20(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

**875—69.21(17A,89A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**69.21(1)** A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

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

**69.21(2)** In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

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

**875—69.22(17A,89A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

**875—69.23(17A,89A) Hearing procedures.**

**69.23(1)** The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

**69.23(2)** All objections shall be timely made and stated on the record.

**69.23(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

**69.23(4)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**69.23(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**69.23(6)** Witnesses may be sequestered during the hearing.

**69.23(7)** The presiding officer shall conduct the hearing in the following manner:

- a.* The presiding officer shall give an opening statement briefly describing the nature of the proceedings.
- b.* The parties shall be given an opportunity to present opening statements.
- c.* The parties shall present their cases in the sequence determined by the presiding officer.
- d.* Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.
- e.* When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.
- f.* The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

**69.23(8)** The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

**69.23(9)** The hearing shall be open to the public, except as otherwise provided by law.

**69.23(10)** Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the board for five years after the resolution of the case.

**69.23(11)** Default.

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

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

*c.* Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 69.27(3). A motion to vacate must state all facts relied upon by the moving party that establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact must be substantiated by at least one attached, sworn affidavit of a person with personal knowledge.

*d.* The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

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

*f.* "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

*g.* A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

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

*i.* A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

**875—69.24(17A,89A) Evidence.**

**69.24(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**69.24(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**69.24(3)** Evidence in the proceeding shall be confined to the contested issues as identified in the notice of hearing.

**69.24(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**69.24(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**69.24(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**875—69.25(17A,89A) Ex parte communication.**

**69.25(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**69.25(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

**69.25(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**69.25(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**69.25(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**69.25(6)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

*a.* If the presiding officer determines that disqualification is warranted, the following shall be submitted for inclusion in the record under seal by protective order:

- (1) A copy of any prohibited written communication,
- (2) All written responses to the communication,
- (3) A written summary stating the substance of any prohibited oral or other communication not available in written form and all responses made, and
- (4) The identity of each person from whom the presiding officer received a prohibited ex parte communication; or

*b.* If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**69.25(7)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13, subsection 2, or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**69.25(8)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the commissioner.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—69.26(17A,89A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

**875—69.27(17A,89A) Decisions.**

**69.27(1) Proposed decision.** Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

**69.27(2) Final decision.** When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the counsel of record.

**69.27(3) Appeals and review.**

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

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

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

- (1) The parties initiating the appeal;
- (2) The proposed decision or order appealed from;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

- (4) The relief sought;
- (5) The grounds for relief.

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

*e. Scheduling.* The board shall issue a schedule for consideration of the appeal.

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

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

*g. Record.* The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

**875—69.28(17A,89A) Contested cases with no factual disputes.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**875—69.29(17A,89A) Applications for rehearing.**

**69.29(1) *By whom filed.*** Any party to a contested case proceeding may file an application for rehearing from a final order.

**69.29(2) *Content of application.*** The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

**69.29(3) *Time of filing.*** The application shall be filed with the board within 20 days after issuance of the final decision.

**69.29(4) *Notice to other parties.*** A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

**69.29(5) *Disposition.*** The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

**875—69.30(17A,89A) Stays of board actions.**

**69.30(1) *When available.***

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

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

**69.30(2) *When granted.*** In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

**69.30(3) *Vacation.*** A stay may be vacated by the issuing authority upon application of the board or any other party.

**875—69.31(17A,89A) *Judicial review.*** Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

**69.31(1)** Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

**69.31(2)** If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 69.29(5).

These rules are intended to implement Iowa Code chapters 17A and 89A.

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

**875—70.1(22,89A) Definitions.** As used in this chapter:

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

“*Custodian*” in these rules means the elevator safety board.

“*Personally identifiable information*” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the board.

“*Record system*” in these rules means any group of records under the control of the board from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.2(22,89A) Statement of policy.** The purpose of this chapter is to facilitate broad public access to open records and sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22; the board shall cooperate with members of the public in implementing the provisions of that chapter.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.3(22,89A) Requests for access to records.**

**70.3(1) Location of record.** A request for access to a record should be directed to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

**70.3(2) Office hours.** Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

**70.3(3) Request for access.** Requests for access to open records may be made in writing, in person, by facsimile, E-mail, or other electronic means, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the board’s response. A person shall not be required to give a reason for requesting an open record. While agencies are not required by Iowa Code chapter 22 to respond to requests for public records that are not made in person, the board will respond to such requests as reasonable under the circumstances.

**70.3(4) Response to requests.** Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a

confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 875—70.4(22,89A) and other applicable provisions of law.

**70.3(5) Security of record.** No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

**70.3(6) Copying.** A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available in the board office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

**70.3(7) Fees.**

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

*b. Copying and postage costs.* Price schedules for published materials and for photocopies of records supplied by the board shall be prominently posted in board offices. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and posted in board offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

*c. Supervisory fee.* An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The custodian shall prominently post in board offices the hourly fees to be charged for supervision of records during examination and copying. The hourly fee shall be based upon the pay scale of the employee involved and other actual costs incurred. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

*d. Advance deposits.*

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

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

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.4(22,89A) Access to confidential records.** Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 875—70.3(22,89A).

**70.4(1) Proof of identity.** A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**70.4(2) Requests.** The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**70.4(3) Notice to subject of record and opportunity to obtain injunction.** After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential

record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**70.4(4) Request denied.** When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

**70.4(5) Request granted.** When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

**875—70.5(22,89A) Requests for treatment of a record as a confidential record and its withholding from examination.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

**70.5(1) Persons who may request.** Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

**70.5(2) Request.** A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

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

**70.5(3) Failure to request.** Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the board does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

**70.5(4) Timing of decision.** A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

**70.5(5) Request granted or deferred.** If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

**70.5(6) Request denied and opportunity to seek injunction.** If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.6(22,89A) Procedure by which additions, dissents, or objections may be entered into certain records.** Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.7(22,89A) Consent to disclosure by the subject of a confidential record.** To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of an attorney before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.8(22,89A) Disclosures without the consent of the subject.**

**70.8(1)** Open records are routinely disclosed without the consent of the subject.

**70.8(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

*a.* For a routine use as defined in rule 875—70.9(17A, 89A) or in the notice for a particular record system.

*b.* To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

*c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.

*d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

*e.* To the legislative services agency.

*f.* Disclosures in the course of employee disciplinary proceedings.

*g.* In response to a court order or subpoena.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.9(17A,89A) Routine use.** “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. “Routine use” includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

**70.9(1)** Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes a legitimate need to use confidential records.

**70.9(2)** Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

**70.9(3)** Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

**70.9(4)** Transfers of information within the board, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

**70.9(5)** Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

**70.9(6)** Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**70.9(7)** Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in appeal proceedings.

**70.9(8)** Transmittal to the district court of the record in judicial review proceedings pursuant to Iowa Code section 17A.19.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.10(22,89A) Consensual disclosure of confidential records.**

**70.10(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 875—70.7(22,89A).

**70.10(2)** *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**875—70.11(22,89A) Release to subject.**

**70.11(1)** The subject of a confidential record may file a written request to review confidential records about that person. However, the board need not release the following records to the subject:

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

*b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

*c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

*d.* Other records may be withheld from the subject as authorized by law.

**70.11(2)** When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.12(21,22,89A) Availability of records.**

**70.12(1) General.** Board records are open for public inspection and copying unless otherwise provided by rule or law.

**70.12(2) Confidential records.** The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

*a.* Personal information in confidential personnel records of board members and licensees. (Iowa Code section 22.7(11))

*b.* Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

*c.* Information or records received from a restricted source and any other information or records made confidential by law.

*d.* Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

*e.* Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "e."

**70.12(3) Authority to release confidential records.** The board may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 875—70.4(22,89). If the board initially determines that it will release such records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 70.4(3).

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.13(22,89A) Applicability.** This chapter does not:

**70.13(1)** Require the board to index or retrieve records that contain information about individuals by a person's name or other personal identifier.

**70.13(2)** Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

**70.13(3)** Govern the maintenance or disclosure of, notification of, or access to records in the possession of the board that are governed by the regulations of another agency.

**70.13(4)** Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

**70.13(5)** Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.

[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.14(17A,22,89A) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems. For each record system, this rule describes the legal authority for the collection of that information. The record systems maintained by the board are:

**70.14(1) *Personnel records.*** These records contain personal information about board members which may be confidential pursuant to Iowa Code section 22.7(11). The records may include but are not limited to biographical information, medical information relating to disability, and information required for expense reimbursement.

**70.14(2) *Contested case records.*** Contested case records are maintained and contain names of the people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records. These records are collected pursuant to Iowa Code section 89A.11.  
[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.15(17A,21,22,89A) Other groups of records.** This rule describes groups of records maintained by the board other than record systems. These records are routinely available to the public. However, the board's files of these records may contain confidential information. These records may contain information about individuals. These records include:

**70.15(1) *Rule-making records.*** Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are stored on paper and electronically.

**70.15(2) *Board records.*** Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the board office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored on paper and electronically.

**70.15(3) *Board decisions, findings of fact, final orders, and other statements of law, policy, or declaratory orders issued by the board in the performance of its functions.*** These records are open to the public except for information that is confidential according to rule 875—70.12(21,22,89A). This information is stored on paper and electronically.

**70.15(4) *Waivers and variances.*** Requests for waivers and variances, board proceedings and rulings on such requests, and reports prepared for the administrative rules review committee and others are stored on paper and electronically.

**70.15(5) *Publications.*** News releases, project reports, newsletters, and other publications are available from the board office. These records may contain information about individuals. This information is stored on paper and electronically, and some publications may be found on the board's Web site.

**70.15(6) *Other records.*** Other records that are not exempted from disclosure by law may be stored on paper or electronically.  
[ARC 8621B, IAB 3/24/10, effective 4/28/10]

**875—70.16(22,89A) Data processing system.** Board records are not stored in a data processing system which matches, collates, or permits comparison of personally identifiable information in one record system with personally identifiable information in another record system.

**875—70.17(22,89A) Notice to suppliers of information.** Persons that are requested by the board to provide information to the board are notified pursuant to this rule of uses the board will make of the information.

**70.17(1)** The board may request names and affiliations from members of the public that attend board meetings. Except for closed sessions, the records of board meetings are public records and information supplied will be subject to records requests pursuant to this chapter and Iowa Code chapter 22. Provision of this information is voluntary, and there will be no consequences for failure to provide requested information unless the person is also covered by subrule 70.17(2).

**70.17(2)** The board will request name, contact information, and affiliation from persons requesting board action. This information will be used as needed to process the request for board action. Requests for board action are public records, and information supplied will be subject to open records requests

pursuant to this chapter and Iowa Code chapter 22. Insufficient contact information provided with the request for board action could result in a denial of the request for board action.

These rules are intended to implement Iowa Code chapters 17A, 21, 22 and 89A.

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