

State of Iowa

Iowa
Administrative
Code
Supplement

Biweekly
February 21, 2024



Published by the
STATE OF IOWA
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

The Iowa Administrative Code (IAC) Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 17A.6. The Supplement is a compilation of updated Iowa Administrative Code chapters that reflect rule changes which have been adopted by agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17, 17A.4, and 17A.5 and published in the Iowa Administrative Bulletin bearing the same publication date as the one for this Supplement. To determine the specific changes to the rules, refer to the Iowa Administrative Bulletin. To maintain a loose-leaf set of the IAC, insert the chapters according to the instructions included in the Supplement.

In addition to the rule changes adopted by agencies, the 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 or suspension imposed by the ARRC pursuant to section 17A.8(9) or 17A.8(10); rescission of a rule by the Governor pursuant to section 17A.4(8); nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa; other action relating to rules enacted by the General Assembly; updated chapters for the Uniform Rules on Agency Procedure; or an editorial change to a rule by the Administrative Code Editor pursuant to Iowa Code section 2B.13(2).

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 515.242.6873

Capital Investment Board, Iowa[123]

Replace Analysis

Replace Chapters 1 to 4 with Reserved Chapters 1 to 4

Utilities Division[199]

Replace Analysis

Replace Chapter 6

Replace Chapter 12 with Reserved Chapter 12

Replace Chapter 18

Employment Appeal Board[486]

Replace Chapter 1

Replace Chapters 3 to 5

Replace Chapter 8

Racing and Gaming Commission[491]

Replace Analysis

Replace Chapter 4

Replace Chapters 13 and 14

CAPITAL INVESTMENT BOARD, IOWA[123]

[Created by 2002 Iowa Acts, chapter 1005, section 3]

Rules of Iowa Capital Investment Board[123] rescinded in **ARC 7633C**, IAB 2/21/24, effective 3/27/24

CHAPTER 1
IOWA CAPITAL INVESTMENT BOARD – ADMINISTRATION
Rescinded **ARC 7633C**, IAB 2/21/24, effective 3/27/24

CHAPTER 2
TAX CREDIT FOR INVESTMENTS IN QUALIFYING BUSINESSES
AND COMMUNITY-BASED SEED CAPITAL FUNDS
Rescinded **ARC 7633C**, IAB 2/21/24, effective 3/27/24

CHAPTER 3
TAX CREDIT FOR INVESTMENTS IN VENTURE CAPITAL FUNDS
Rescinded **ARC 7633C**, IAB 2/21/24, effective 3/27/24

CHAPTER 4
INVESTMENT TAX CREDITS RELATING TO INVESTMENTS IN A FUND OF FUNDS
ORGANIZED BY THE IOWA CAPITAL INVESTMENT CORPORATION
Rescinded **ARC 7633C**, IAB 2/21/24, effective 3/27/24

UTILITIES DIVISION[199]

Former Commerce Commission[250] renamed Utilities Division[199]
under the “umbrella” of Commerce Department[181] by 1986 Iowa Acts, Senate File 2175, section 740.

CHAPTER 1**ORGANIZATION AND OPERATION**

1.1(17A,474)	Purpose
1.2(17A,474)	Scope of rules
1.3(17A,474,476)	Waivers
1.4(17A,474)	Duties of the board
1.5(17A,474)	Organization
1.6(68B)	Consent for the sale or lease of goods and services
1.7	Reserved
1.8(17A,474)	Matters applicable to all proceedings
1.9(22)	Public information and inspection of records

CHAPTER 2**FORMS**

2.1(17A,474)	Documents filed with the utilities board
2.2(17A,474)	Forms

CHAPTER 3**RULE MAKING**

3.1(17A,474)	Purpose and scope
3.2(17A,474)	Initial stakeholder input
3.3(17A,474)	Petition for adoption of rules
3.4(17A,474)	Commencement of proceedings
3.5 and 3.6	Reserved
3.7(17A,474)	Requests for oral presentation
3.8(17A,474)	Rule-making oral presentation
3.9(17A,474)	Rule-making decisions
3.10(17A,474)	Regulatory analysis
3.11(17A,474)	Review of rules

CHAPTER 4**DECLARATORY ORDERS**

4.1(17A)	Petition for declaratory order
4.2	Reserved
4.3(17A)	Intervention
4.4(17A)	Briefs
4.5	Reserved
4.6(17A)	Service and filing of petitions and other documents
4.7(17A)	Informal meeting
4.8	Reserved
4.9(17A)	Refusal to issue order
4.10 and 4.11	Reserved
4.12(17A)	Effect of a declaratory order

CHAPTER 5**Reserved**

CHAPTER 6
COMPLAINT PROCEDURES

- 6.1(476) General inquiries
- 6.2(476) Informal complaint procedures
- 6.3(476) Processing the informal complaint
- 6.4(476) Proposed resolution of an informal complaint
- 6.5(476) Initiating formal complaint proceedings
- 6.6(476) Applicable procedures
- 6.7(476) Record
- 6.8(476) Special procedures for complaints alleging unauthorized changes in telecommunications services

CHAPTER 7
PRACTICE AND PROCEDURE

- 7.1(17A,474,476) Scope and applicability
- 7.2(17A,476) Definitions
- 7.3(17A,476) Presiding officers
- 7.4(17A,474,476) General information
- 7.5(17A,476) Time requirements
- 7.6(17A,476) Electronic proceedings
- 7.7(17A,476) Electronic information
- 7.8(17A,476) Delivery of notice of hearing
- 7.9(17A,476) Pleadings and answers
- 7.10(17A,476) Prefiled testimony and exhibits
- 7.11(17A,476) Documentary evidence in books and materials
- 7.12(17A,476) Motions
- 7.13(17A,476) Intervention
- 7.14(17A,476) Consolidation and severance
- 7.15(17A,476) Discovery
- 7.16(17A,476) Subpoenas
- 7.17(17A,476) Prehearing or scheduling conference
- 7.18(17A,476) Settlements
- 7.19(17A,476) Stipulations
- 7.20(17A,476) Investigations
- 7.21(17A,476) Withdrawals
- 7.22(17A,476) Ex parte communication
- 7.23(17A,476) Hearings
- 7.24(17A,476) Reopening record
- 7.25(17A,476) Interlocutory appeals
- 7.26(17A,476) Appeals to board from a proposed decision of a presiding officer
- 7.27(17A,476) Rehearing and reconsideration
- 7.28(17A,476) Stay of agency decision
- 7.29(17A,476) Emergency adjudicative proceedings

CHAPTER 8
CIVIL PENALTIES

- 8.1(476,476A,478,479,479B) Civil penalty
- 8.2(476,476A,478,479,479B) Procedure
- 8.3(476,476A,478,479,479B) Penalties assessed
- 8.4(476,476A,478,479,479B) Payment of penalty
- 8.5(476,476A,478,479,479B) Rate-regulated utilities

CHAPTER 9
RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE
CONSTRUCTION

9.1(479,479B)	General information
9.2(479,479B)	Filing of land restoration plans
9.3(479,479B)	Procedure for review of plan
9.4(479,479B)	Staking and clearing of agricultural land
9.5(479,479B)	Restoration of agricultural lands
9.6(479,479B)	Designation of a pipeline company point of contact for landowner inquiries or claims
9.7(479,479B)	Separate agreements
9.8(479,479B)	Notice of violation and halting construction
9.9(479,479B)	Enforcement
9.10(479,479B)	Project completion
9.11(479,479B)	Document submittal

CHAPTER 10
INTRASTATE GAS PIPELINES AND UNDERGROUND GAS STORAGE

10.1(479)	General information
10.2(479)	Informational meetings
10.3(479)	Petition for permit
10.4(479)	Notice of hearing
10.5(479)	Objections
10.6(479)	Hearing
10.7(479)	Pipeline permit
10.8(479)	Renewal permits
10.9(479)	Amendment of permits
10.10(479)	Fees and expenses
10.11(479)	Inspections
10.12(479)	Standards for construction, operation and maintenance
10.13(479)	Crossings of highways, railroads, and rivers
10.14(479)	Transmission line factors
10.15(479)	Reports to federal agencies
10.16(479)	Reportable changes to pipelines under permit
10.17(479)	Sale or transfer of permit
10.18(479)	Termination of petition for pipeline permit proceedings
10.19(479)	Gathering line filing requirements

CHAPTER 11
ELECTRIC LINES

11.1(478)	General information
11.2(478)	Definitions
11.3(478)	Route selection
11.4(478)	Informational meetings
11.5(478)	Petition for a new franchise
11.6(478)	Petition for an amendment to a franchise
11.7(478)	Petition for the abbreviated franchise process
11.8(478)	Petition for extension of franchise
11.9(478)	Additional requirements
11.10(478)	Notices
11.11(478)	Common and joint use
11.12(478)	Termination of franchise petition proceedings

- 11.13(478) Fees and expenses
- 11.14(478) Federally registered planning authority transmission projects

CHAPTER 12

Reserved

CHAPTER 13

HAZARDOUS LIQUID PIPELINES AND UNDERGROUND STORAGE

- 13.1(479B) General information
- 13.2(479B) Informational meetings
- 13.3(479B) Petition for permit
- 13.4(479B) Notice of hearing
- 13.5(479B) Objections
- 13.6(479B) Hearing
- 13.7(479B) Pipeline permit
- 13.8(479B) Renewal permits
- 13.9(479B) Amendment of permits
- 13.10(479B) Fees and expenses
- 13.11(479B) Land restoration
- 13.12(479B) Crossings of highways, railroads, and rivers
- 13.13(479B) Reportable changes to pipelines under permit
- 13.14(479B) Sale or transfer of permit
- 13.15(479B) Reports to federal agencies
- 13.16(479B) Termination of petition for pipeline permit proceedings

CHAPTER 14

ELECTRONIC FILING

- 14.1(17A,476) Purpose
- 14.2(17A,476) Scope and applicability of electronic filing requirement
- 14.3(17A,476) Definitions
- 14.4(17A,476) Exceptions; number of paper copies required
- 14.5(17A,476) Electronic filing procedures and required formats
- 14.6(17A,476) Registration
- 14.7(17A,476) Electronic file
- 14.8(17A,476) Paper copies required
- 14.9(17A,476) When electronic filings can be made; official filing date
- 14.10(17A,476) Notice of system unavailability
- 14.11(17A,476) Technical difficulties
- 14.12(17A,476) Documents containing confidential material
- 14.13(17A,476) Signatures
- 14.14(17A,476) Original documents
- 14.15(17A,476) Transcripts
- 14.16(17A,476) Electronic service

*UTILITIES AND
TRANSPORTATION DIVISIONS*

CHAPTER 15

COGENERATION AND SMALL POWER PRODUCTION

- 15.1(476) Definitions
- 15.2(476) Scope
- 15.3(476) Information to board
- 15.4(476) Rate-regulated electric utility obligations under this chapter regarding qualifying facilities

15.5(476)	Rates for purchases from qualifying facilities by rate-regulated electric utilities
15.6(476)	Rates for sales to qualifying facilities and AEP facilities by rate-regulated utilities
15.7(476)	Additional services to be provided to qualifying facilities and AEP facilities by rate-regulated electric utilities
15.8(476)	Interconnection costs
15.9(476)	System emergencies
15.10(476)	Standards for interconnection, safety, and operating reliability
15.11(476)	Additional rate-regulated utility obligations regarding AEP facilities
15.12 to 15.16	Reserved
15.17(476)	Alternate energy purchase programs
15.18(476B)	Certification of eligibility for wind energy tax credits under Iowa Code chapter 476B
15.19(476C)	Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C
15.20(476B)	Applications for wind energy tax credits under Iowa Code chapter 476B
15.21(476C)	Applications for renewable energy tax credits under Iowa Code chapter 476C
15.22(476)	Small wind innovation zones

CHAPTER 16 ACCOUNTING

16.1(476)	Accounting—general information
16.2(476)	Uniform systems of accounts—electric
16.3(476)	Uniform systems of accounts—gas
16.4(476)	Uniform systems of accounts—water
16.5(476)	Uniform systems of accounts—telephone
16.6	Reserved
16.7(476)	Filing of promotional practices
16.8(476)	Compiling advertisements and expenses
16.9(476)	Postemployment benefits other than pensions

CHAPTER 17 ASSESSMENTS

17.1(475A,476,546)	Purpose
17.2(475A,476)	Definitions
17.3(476)	Expenses to be included in direct assessments
17.4(476)	Direct assessments under Iowa Code section 476.10
17.5(476)	Reporting of operating revenues
17.6(475A,476)	Compilation and billing of assessment
17.7(476)	Funding of Iowa energy center and center for global and regional environmental research
17.8(476)	Assessments under Iowa Code section 476.95B
17.9(477C)	Assessments of expenses for dual party relay service program and equipment distribution program
17.10(475A,476)	Objection procedures
17.11(476,477C)	Refunds

CHAPTER 18 UTILITY RECORDS

18.1(476)	Definitions
18.2(476)	Location of records
18.3(476)	Availability of records
18.4(476)	Electric utilities other than rural electric cooperatives
18.5(476)	Rural electric cooperatives

- 18.6(476) Gas utilities
- 18.7(476) Water, sanitary sewage, and storm water drainage utilities

CHAPTER 19

SERVICE SUPPLIED BY GAS UTILITIES

- 19.1(476) General information
- 19.2(476) Records, reports, and tariffs
- 19.3(476) General service requirements
- 19.4(476) Customer relations
- 19.5(476) Engineering practice
- 19.6(476) Metering
- 19.7(476) Standards of quality of service
- 19.8(476) Safety
- 19.9 Reserved
- 19.10(476) Purchased gas adjustment (PGA)
- 19.11(476) Periodic review of gas procurement practices
- 19.12(476) Flexible rates
- 19.13(476) Transportation service
- 19.14(476) Certification of competitive natural gas providers and aggregators
- 19.15(476) Customer contribution fund
- 19.16(476) Reserve margin
- 19.17(476) Incident notification and reports
- 19.18(476) Capital infrastructure investment automatic adjustment mechanism

CHAPTER 20

SERVICE SUPPLIED BY RATE-REGULATED ELECTRIC UTILITIES

- 20.1(476) General information
- 20.2(476) Records, reports, and tariffs
- 20.3(476) General service requirements
- 20.4(476) Customer relations
- 20.5(476) Engineering practice
- 20.6(476) Metering
- 20.7(476) Standards of quality of service
- 20.8(476) Safety
- 20.9(476) Electric energy automatic adjustment
- 20.10(476) Ratemaking standards
- 20.11(476) Customer notification of peaks in electric energy demand
- 20.12 Reserved
- 20.13(476) Periodic electric energy supply and cost review [476.6(16)]
- 20.14(476) Flexible rates
- 20.15(476) Customer contribution fund
- 20.16(476) Exterior flood lighting
- 20.17(476) Ratemaking treatment of emission allowances
- 20.18(476,478) Service reliability requirements for electric utilities
- 20.19(476,478) Notification of outages
- 20.20(476) Electric vehicle charging service
- 20.21(476) Transmission cost adjustment (TCA)

CHAPTER 21
SERVICE SUPPLIED BY WATER, SANITARY SEWAGE, AND STORM WATER DRAINAGE
UTILITIES

DIVISION I
GENERAL PROVISIONS

- 21.1(476) Application of rules
21.2(476) Records and reports for water, sanitary sewage, and storm water drainage utilities

DIVISION II
WATER UTILITIES

- 21.3(476) General water service requirements
21.4(476) Customer relations for water service
21.5(476) Engineering practice for water service
21.6(476) Meter testing for water service
21.7(476) Standards of quality of water service
21.8(476) Applications for water costs for fire protection services
21.9(476) Incident reports regarding water service
21.10(476) Separate books for acquired water service assets

DIVISION III
SANITARY SEWAGE UTILITIES

- 21.11(476) General sanitary sewage disposal service requirements
21.12(476) Customer relations for sanitary sewage disposal service
21.13(476) Engineering practice for sanitary sewage disposal service
21.14(476) Meter testing for sanitary sewage disposal service
21.15(476) Standards of quality of sanitary sewage disposal service
21.16(476) Incident reports regarding sanitary sewage disposal service
21.17(476) Separate books for acquired sanitary sewage disposal service assets

DIVISION IV
STORM WATER DRAINAGE UTILITIES

- 21.18(476) Standards of quality of storm water drainage service
21.19(476) Customer relations for storm water drainage service
21.20(476) Incident reports regarding storm water drainage service
21.21(476) Separate books for acquired storm water drainage service assets

CHAPTER 22
REGULATION OF TELECOMMUNICATIONS SERVICE

- 22.1(476) General information
22.2(476) Tariffs
22.3(476) Customer complaints
22.4(476) Intrastate access charge application, tariff procedures, and rates
22.5(476) Interexchange telecommunications service provider service and access
22.6(476) Alternative operator services
22.7(476) Service territories
22.8(476) Registration of telecommunications service providers
22.9(476) Unauthorized changes in telecommunications service

CHAPTER 23
ANNUAL REPORT

- 23.1(476) General information
23.2(476) Annual report requirements

CHAPTER 24
LOCATION AND CONSTRUCTION OF ELECTRIC POWER
GENERATING FACILITIES

24.1(476A)	Authority, purpose, and policy
24.2(476A)	Definitions
24.3(476A)	Form of application, place of filing
24.4(476A)	Application for a certificate—contents
24.5(476A)	Initial board review: Application acceptance
24.6(476A)	Procedural schedule
24.7(476A)	Informational meeting
24.8(476A)	Hearing procedure
24.9(476A)	Separate hearings on separate issues
24.10(476A)	Certification decision
24.11(476A)	Site preparation
24.12(476A)	Issuance of a certificate
24.13(476A)	Exemptions from certification application; application for amendment for certificate: Contents
24.14(476A)	Assessment of costs
24.15(476A)	Waiver

CHAPTER 25
IOWA ELECTRICAL SAFETY CODE

25.1(476,476A,478)	General information
25.2(476,476A,478)	Iowa electrical safety code defined
25.3(476,478)	Inspection and maintenance plans
25.4(476,478)	Correction of problems found during inspections and pole attachment procedures
25.5(476,478)	Accident reports

CHAPTER 26
RATE CASES, TARIFFS, AND RATE REGULATION ELECTION PRACTICE AND PROCEDURE

26.1(17A,476)	Scope
26.2(17A,476)	Definitions
26.3(17A,476)	Tariffs required
26.4(17A,476)	General rate increase applications filed pursuant to Iowa Code section 476.6
26.5(17A,476)	Compliance filings and tariffs
26.6(17A,476)	Subsequent proceeding in rate case proceedings based upon a future test year
26.7(476)	Rate case expense
26.8(476)	Procedural schedule in Iowa Code section 476.6 proceedings
26.9(17A,476)	Consumer comment meetings in Iowa Code section 476.6 general rate case proceedings
26.10(476)	Switching from a future test year to a historic test year
26.11(476)	Rate proceedings for small utilities
26.12(17A,476)	Applications pursuant to Iowa Code section 476.6 that are not general rate increase applications
26.13(17A,476)	Rate investigation pursuant to Iowa Code section 476.3
26.14(17A,476)	Applications pursuant to Iowa Code section 476.7
26.15(17A,476)	Proposal of settlements
26.16(476)	Rate regulation election—electric cooperative corporations and associations

CHAPTER 27
REGULATION OF ELECTRIC COOPERATIVES AND MUNICIPAL ELECTRIC UTILITIES
UNDER IOWA CODE CHAPTER 476

27.1(476)	General information
27.2(476)	Assigned area of service and maps
27.3(476)	Customer relations
27.4(476)	Disconnection of service
27.5(476)	Engineering practice
27.6(476)	Metering
27.7(476)	Standards of quality of service
27.8(476)	Safety
27.9(476)	Customer contribution fund
27.10(476,478)	Service reliability requirements for electric utilities
27.11(476,478)	Notification of outages
27.12(476)	Electric vehicle charging service
27.13(476)	Exterior flood lighting

CHAPTER 28
Reserved

CHAPTER 29
MANAGEMENT EFFICIENCY EVALUATION

29.1(476)	Policy and purpose
29.2(476)	Efficiency considered in a complaint or rate case proceeding
29.3(476)	Management efficiency evaluation
29.4(476)	Rewards and penalties

CHAPTER 30
RENEWABLE ENERGY PERCENTAGE VERIFICATION

30.1(476)	General information
30.2(476)	Process for verification
30.3(476)	Reasonableness and prudence of REC retirement
30.4(476)	Renewable energy claims

CHAPTER 31
ACCESS TO AFFILIATE RECORDS, REQUIREMENTS FOR ANNUAL FILINGS,
AND ASSET AND SERVICE TRANSFERS

31.1(476)	Applicability and definition of terms
31.2(476)	Availability of records
31.3(476)	Annual filing
31.4	Reserved
31.5(476)	Verified copies and confidential treatment
31.6(476)	Comparable information
31.7(476)	Standards for costing service transfers between regulated operations and nonregulated affiliates
31.8(476)	Standards for costing asset transfers between regulated operations and non-regulated affiliates valued at less than \$2 million
31.9(476)	Waivers

CHAPTER 32
REORGANIZATION

32.1(476)	Applicability and definition of terms
32.2(476)	Substantial part of a public utility's assets

- 32.3(476) Declaratory orders
- 32.4(476) Proposal for reorganization—filing requirements
- 32.5(476) Effective date
- 32.6(476) Insufficient filing
- 32.7(476) Additional information authorized
- 32.8(476) Waivers
- 32.9(476) Procedural matters
- 32.10(388) Approval of appraiser for municipal utilities

CHAPTER 33
NONUTILITY SERVICES—RECORDKEEPING
AND COST ALLOCATIONS

- 33.1(476) Applicability
- 33.2(476) Definitions
- 33.3(476) Availability of records
- 33.4(476) Costing methodology
- 33.5(476) Cost allocation manuals
- 33.6(476) Standards for costing service transfers within a regulated subsidiary or utility
- 33.7(476) Standards for costing asset transfers within a regulated subsidiary or utility

CHAPTER 34
NONUTILITY SERVICE

- 34.1(476) Statement of purpose
- 34.2(476) Definition—nonutility service
- 34.3(476) Definition—systematic marketing effort
- 34.4(476) Engaged primarily in providing the same competitive nonutility services in the area—defined
- 34.5(476) Charges permitted
- 34.6(476) Procedures for utilization of billing and collection system
- 34.7(476) Complaints

CHAPTER 35
ENERGY EFFICIENCY AND DEMAND RESPONSE PLANNING AND REPORTING FOR
NATURAL GAS AND ELECTRIC UTILITIES REQUIRED TO BE RATE-REGULATED

- 35.1(476) Authority and purpose
- 35.2(476) Definitions
- 35.3(476) Energy efficiency and demand response plan filing
- 35.4(476) Assessment of potential and collaboration
- 35.5(476) Energy efficiency and demand response plan requirements
- 35.6(476) Contested case proceeding
- 35.7(476) Exemptions from participation
- 35.8(476) Annual reporting requirements
- 35.9(476) Energy efficiency and demand response cost recovery
- 35.10(476) Modification of an approved plan
- 35.11(476) Prudence review
- 35.12(476) New structure energy conservation standards

CHAPTER 36
Reserved

CHAPTER 37
EQUIPMENT DISTRIBUTION PROGRAM

37.1(477C)	Purpose
37.2(477C)	Program structure
37.3(477C)	Equipment
37.4(477C)	Application process and eligibility
37.5(477C)	Voucher system
37.6(477C)	Complaints

CHAPTER 38
LOCAL EXCHANGE COMPETITION

38.1(476)	General information
38.2	Reserved
38.3(476)	Interconnection requirements
38.4(476)	Unbundled facilities, services, features, functions, and capabilities
38.5(476)	Cost standards
38.6(476)	Terminating access charge complaints
38.7(476)	Mediation and arbitration

CHAPTER 39
UNIVERSAL SERVICE

39.1(476)	Authority and purpose
39.2(476)	Definition of terms
39.3(476)	Applying for designation as an eligible telecommunications carrier
39.4(476)	Lifeline-only applicants
39.5(476)	Service area
39.6(476)	Universal service support for low-income consumers (Lifeline program and Tribal Link Up program)
39.7(476)	Schedule of filings
39.8(476)	Relinquishment of ETC designation

CHAPTER 40
COMPETITIVE BIDDING PROCESS

40.1(476)	General information
40.2(476)	Competitive resource acquisition procedure
40.3(476)	Utility-build or lease cost estimates
40.4(476)	Utility affiliate bids
40.5(476)	Request for proposals (RFP)
40.6(476)	Complaints

CHAPTER 41
RATEMAKING PRINCIPLES PROCEEDING

41.1(476)	Definitions
41.2(476)	Applicability and purpose
41.3(476)	Application for predetermined ratemaking principles; contents
41.4(476)	Coincident filing
41.5(476)	Acquisition of a water, sanitary sewage, or storm water utility
41.6(476)	Waiver

CHAPTER 42
CROSSING OF RAILROAD RIGHTS-OF-WAY

42.1(476)	Definitions
42.2(476)	Applicability and purpose

42.3(476)	General notice and specification exhibit requirements and payment of fee
42.4(476)	Emergency notice and repairs
42.5(476)	Relocation of public utility facilities
42.6(476)	Engineering standards for electric and communications lines
42.7(476)	Engineering standards for pipelines
42.8(476)	Liability
42.9(476)	Insurance
42.10(476)	Removal of equipment
42.11(476)	Assignment
42.12(476)	Prohibition against mechanic's liens
42.13(476)	Taxes
42.14(476)	Protection of signal systems
42.15(476)	Safety regulations
42.16(476)	Recording
42.17(17A,476)	Complaints and petitions for relief—general information
42.18(17A,476)	Filing of complaint or petition
42.19(17A,476)	Presiding officer
42.20(17A,476)	Answer
42.21(17A,476)	Parties and appearances
42.22(17A,476)	Procedural order and notice of hearing
42.23(17A,476)	Discovery
42.24(17A,476)	Hearing procedures
42.25(17A,476)	Decision

CHAPTER 43

Reserved

CHAPTER 44

CERTIFICATES OF FRANCHISE AUTHORITY FOR
CABLE AND VIDEO SERVICE

44.1(17A,476,477A)	Authority and purpose
44.2(17A,476,477A)	Definitions
44.3(17A,476,477A)	Certificate of franchise authority
44.4(17A,476,477A)	Notice to municipality and incumbent cable provider
44.5(17A,476,477A)	Conversion of municipal franchise by incumbent cable provider
44.6(17A,476,477A)	Revocation of certificates, termination of service, reinstatement of previously terminated municipal franchises
44.7(17A,476,477A)	Renewal of certificate of franchise authority
44.8(17A,476,477A)	Assessment of board costs

CHAPTER 45

ELECTRIC INTERCONNECTION OF DISTRIBUTED GENERATION FACILITIES

45.1(476)	Definitions
45.2(476)	Scope
45.3(476)	Technical standards
45.4(476)	Interconnection requests
45.5(476)	General requirements
45.6(476)	Lab-certified equipment
45.7(476)	Determining the review level
45.8(476)	Level 1 expedited review
45.9(476)	Level 2 expedited review
45.10(476)	Level 3 expedited review
45.11(476)	Level 4 review

45.12(476)
45.13(476)

Disputes
Records and reports

CHAPTER 6
COMPLAINT PROCEDURES
[Previously ch 1, renumbered 10/20/75 Supp.]
[Prior to 10/8/86, Commerce Commission[250]]

199—6.1(476) General inquiries. Any person may seek assistance from the Iowa utilities board by appearing in person at the board's office at 1375 East Court Avenue, Des Moines, Iowa 50319-0069; by mailing an inquiry to the board's office; by placing a telephone call to the board's customer service bureau at 515.725.7300 or toll-free at 877.565.4450; by sending an inquiry by email to customer@iub.iowa.gov; or by contacting the agency through any other means. If the inquiry is not resolved after board staff has obtained additional information, the person making the inquiry may escalate the inquiry to a written complaint by requesting an informal investigation pursuant to rule 199—6.2(476) and Iowa Code section 476.3.

[ARC 7635C, IAB 2/21/24, effective 3/27/24]

199—6.2(476) Informal complaint procedures. Any person may submit a written complaint to the board requesting a determination of the reasonableness of rates, charges, schedules, service, regulations, or anything done or not done by a public utility for those services or rates subject to regulation by the board. "Person" as used in this chapter shall have the same definition as defined in Iowa Code section 4.1(20).

6.2(1) Information to be filed. The written complaint should include the following information:

a. The name of the utility involved, any utility personnel known or believed to be familiar with the facts stated in the complaint, and the location of the office of the utility where the complaint was originally made and processed.

b. The name of the complainant. If the complaint is being made on behalf of a person other than the complainant, an affidavit from the person upon whose behalf the complaint is being made, attesting to the accuracy of the complaint, should be included. A complaint filed by an organization on behalf of its members shall include an affidavit signed by an attorney for, or an officer of, the organization.

c. The address, or addresses, of the premises where the service, billing problems, or other actions occurred. If the complainant resides at a different address, the complaint shall also state where a response to the complaint is to be mailed. The complainant shall provide a telephone number and, if available, an email address where the complainant can be reached.

d. The nature of the complaint, and efforts made to resolve the matter. Bills, correspondence, or other relevant documents should be included if the documents will aid the board's understanding of the utility's action or practice about which the complaint is made. If known, references to statutes or rules believed to govern the outcome of the complaint should be included. Also, a description of the efforts made by the complainant to resolve the complaint with the utility should be included. The complainant should contact the utility to attempt to resolve the complaint prior to submitting a complaint to the board.

e. A proposal for resolving the complaint. The proposal should refer to any known statutes, board orders, or rules that support the resolution proposed by the complainant.

6.2(2) Request for additional information. If board staff determines that additional information is needed prior to forwarding the complaint to the utility, the complainant will be notified that specified additional information is needed. If the requested additional information is not provided within ten days, the complaint may be dismissed. Dismissal of the complaint on this basis does not prevent the complainant from filing in the future a complaint that includes the requested information.

[ARC 7635C, IAB 2/21/24, effective 3/27/24]

199—6.3(476) Processing the informal complaint. When the board receives a written complaint that includes the necessary information outlined in rule 199—6.2(476), board staff shall initiate the informal complaint process by opening an investigation into the complaint and assigning the informal complaint a file number.

6.3(1) Within ten days after receipt of the written complaint, or of any additional information requested, board staff shall forward to the public utility and the consumer advocate the complaint and any additional information provided by the complainant.

6.3(2) The utility shall respond to the complaint within 20 days of receipt and send a copy of its response to the complainant and the consumer advocate. Prior to the date the response is due, the utility may request an extension of time to respond to the complaint. Within five days, board staff shall notify the utility, the complainant, and the consumer advocate whether the request for an extension is granted and of the length of the extension.

6.3(3) The utility shall specifically address each allegation made by the complainant and provide any supporting facts, statutes, rules, board orders, or tariff provisions supporting its response. The utility shall include copies of all related letters, records, or other documents not supplied by the complainant, and all records concerning the complainant that are not confidential or privileged. In cases involving confidential or privileged records, the response shall advise of the records' existence.

[ARC 7635C, IAB 2/21/24, effective 3/27/24]

199—6.4(476) Proposed resolution of an informal complaint.

6.4(1) After the utility's response is received, board staff may request additional information deemed necessary to complete the investigation and resolve the complaint. When all necessary information has been received and the investigation is complete, board staff shall, within 30 days, send a letter with a proposed resolution of the complaint to the complainant, the utility, and the consumer advocate. Staff shall notify the complainant, the utility, and consumer advocate when the investigation is complete and the 30-day time period to issue a proposed resolution commences.

6.4(2) In the proposed resolution, board staff shall inform the parties of their right to request formal proceedings. The complainant, utility, and consumer advocate have 14 days after the date the proposed resolution is issued to file a request for a formal proceeding. If no party files a request for formal proceeding within 14 days pursuant to subrule 6.5(1), the proposed resolution is binding.

6.4(3) After the proposed resolution is issued, the complainant, utility, or consumer advocate may request in writing within 14 days that board staff reopen the investigation regarding the complaint to consider additional information, changed circumstances, or other relevant information not provided in the initial investigation. Within five days of receiving the request, board staff shall send a response to the request to reopen the investigation, either advising the parties that the investigation will be reopened and a second proposed resolution will be issued or denying the request. If the request to reopen the investigation is denied, the complainant, utility, or consumer advocate has 14 days from the issuance of the denial to request that the board open a formal complaint proceeding pursuant to subrule 6.5(1).

[ARC 7635C, IAB 2/21/24, effective 3/27/24]

199—6.5(476) Initiating formal complaint proceedings.

6.5(1) *Request for formal proceeding based upon a proposed resolution.* If the consumer advocate, complainant, or public utility does not agree with the proposed resolution, a request for a formal complaint proceeding may be made in writing within 14 days of the issuance of the proposed resolution. The request for a formal proceeding shall be considered as filed on the date of the United States Postal Service postmark, the date of email, the date of filing in the board's electronic filing system, or the date of in-person delivery to the board's customer service bureau. The request shall include the file number of the informal complaint. The request shall explain why the proposed resolution should be modified or rejected and shall propose an alternate resolution. All parties to the informal complaint shall be provided copies of the request for a formal proceeding. Any other party to the informal complaint investigation may submit a response to the request for a formal proceeding within ten days of the date the request was submitted to the board.

6.5(2) *Request for formal complaint proceeding.* Upon receipt of a request for a formal complaint proceeding, the board shall issue an order either granting or denying the request.

[ARC 7635C, IAB 2/21/24, effective 3/27/24]

199—6.6(476) Applicable procedures. When the complaint is docketed as a formal proceeding, the procedures set forth in 199—Chapter 7 will apply.

[ARC 7635C, IAB 2/21/24, effective 3/27/24]

199—6.7(476) Record. The written complaint and all information obtained during the informal investigation shall be uploaded into the electronic filing system formal complaint docket and be made part of the record in the formal complaint proceeding. The information from the informal complaint investigation shall be redacted pursuant to requirements in 199—Chapter 7.

[ARC 7635C, IAB 2/21/24, effective 3/27/24]

199—6.8(476) Special procedures for complaints alleging unauthorized changes in telecommunications services. Notwithstanding the deregulation of a communications service or facility pursuant to Iowa Code section 476.1D, complaints alleging an unauthorized change in telecommunications service (more information is contained in the “Unauthorized changes in telecommunications service” rule in 199—Chapter 22) will be processed pursuant to this chapter with the following additional or substituted procedures:

6.8(1) Upon receipt of the complaint and with the customer’s acknowledgment, a copy of the complaint or a notification of receipt of a telephone or other oral complaint will be forwarded to the executing service provider and the preferred service provider as a request for a change in the customer’s service to the customer’s preferred service provider, unless the service has already been changed to the preferred service provider.

6.8(2) The complaint or notification of receipt of a telephone or other oral complaint will also be forwarded to the alleged unauthorized service provider. That entity shall file a response to the complaint within 20 days of the date the complaint or notification of receipt of a telephone or other oral complaint was forwarded. The response must include proof of verification of the customer’s authorization for a change in service or a statement that the unauthorized service provider does not have such proof of verification.

6.8(3) If the alleged unauthorized service provider includes with its response alleged proof of verification of the customer’s authorization for a change in service, the response will be forwarded to the customer. The customer will have ten days to challenge the verification or otherwise reply to the service provider’s response.

6.8(4) As a part of the informal complaint proceedings, board staff may issue a proposed resolution to determine the potential liability, including assessment of damages, for unauthorized changes in service among the customer, the previous service provider, the executing service provider, and the submitting service provider, and any other interested person. In all cases, the proposed resolution shall allocate responsibility among the interested persons on the basis of their relative responsibility for the events that are the subject matter of the complaint. For purposes of this rule and in the absence of unusual circumstances, the term “damages” means charges directly relating to the telecommunications services provided to the customer that have appeared or may appear on the customer’s bill. The term “damages” does not include incidental, consequential, or punitive damages.

6.8(5) If the complainant, the service provider, consumer advocate, or any other interested person directly affected by the proposed decision is dissatisfied with the proposed resolution, a request for formal complaint proceedings may be filed. A request for formal complaint proceedings will be processed by the board pursuant to rule 199—6.5(476) et seq.

If no request for formal complaint proceedings is received by the board within 14 days after issuance of the proposed resolution, the proposed resolution will be deemed binding upon all persons notified of the informal proceedings and affected by the proposed resolution. Notwithstanding the binding nature of any proposed resolution as to the affected persons, the board may at any time and on its own motion initiate formal proceedings that may alter the allocation of liability.

6.8(6) No entity may commence any actions to rebill, directly bill, or otherwise collect any disputed charges for a change in service until after board action on the complaint is final. If final board action finds that the change in service was unauthorized and determines the customer should pay some amount

less than the billed amount, the service provider is prohibited from rebilling or taking any other steps whatsoever to collect the difference between the allowed charges and the original charges.

[ARC 7635C, IAB 2/21/24, effective 3/27/24]

These rules are intended to implement Iowa Code sections 476.2, 476.3, 476.103 and 546.7.

[Filed prior to 7/4/51]

[Filed without Notice 10/8/75—published 10/20/75]

[Filed 2/11/76, Notice 7/14/76—published 2/23/76, effective 3/29/76]

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]

[Filed 11/4/83, Notice 8/31/83—published 11/23/83, effective 1/1/84]

[Filed 5/18/84, Notice 2/15/84—published 6/6/84, effective 7/11/84]¹

[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]

[Filed 5/29/87, Notice 3/11/87—published 6/17/87, effective 9/16/87]

[Filed 10/16/87, Notice 8/26/87—published 11/4/87, effective 12/9/87]

[Filed 9/14/90, Notice 11/29/89—published 10/3/90, effective 11/7/90]

[Published 6/17/98 to update name and address of board]

[Filed emergency 7/23/99—published 8/11/99, effective 8/2/99]

[Filed 4/28/00, Notice 8/11/99—published 5/17/00, effective 6/21/00]

[Filed 11/19/03, Notice 4/2/03—published 12/10/03, effective 1/14/04]

[Filed 10/31/08, Notice 4/9/08—published 11/19/08, effective 12/24/08]

[Editorial change: IAC Supplement 12/29/10]

[Filed ARC 4253C (Notice ARC 3850C, IAB 6/20/18), IAB 1/16/19, effective 2/20/19]

[Filed ARC 7635C (Notice ARC 7124C, IAB 11/29/23), IAB 2/21/24, effective 3/27/24]

¹ Effective date of chapter 6 delayed 70 days by administrative rules review committee

CHAPTER 12
INTERSTATE NATURAL GAS PIPELINES
AND UNDERGROUND STORAGE
Rescinded **ARC 7636C**, IAB 2/21/24, effective 3/27/24

CHAPTER 18
UTILITY RECORDS

[Prior to 10/8/86, Commerce Commission[250]]

199—18.1(476) Definitions. The following terms, when used in this chapter, have the meanings shown below:

“*FERC rules*” means the rules and regulations of the Federal Energy Regulatory Commission under the Federal Power Act and Natural Gas Act as published in the CFR.

“*NARUC guidelines*” means the guidelines published by the National Association of Regulatory Utility Commissioners.

“*RUS rules*” means the rules and regulations of the Rural Utilities Service of the United States Department of Agriculture, 7 CFR Part 1767, applicable to electric and telephone borrowers of the RUS under the terms of their mortgages to the RUS.

[ARC 7637C, IAB 2/21/24, effective 3/27/24]

199—18.2(476) Location of records. All records kept pursuant to any rules of the board, or necessary for the administration thereof, shall be kept or made accessible within this state unless otherwise authorized by the board, including:

18.2(1) The utility’s tariffs.

18.2(2) A record of the telephone number and business location of the utility’s administrative, technical, and operating personnel within the state.

18.2(3) The most recent inspection report.

18.2(4) The most recent rate case filing.

18.2(5) Annual reports for the past five years.

18.2(6) Shareholder’s reports for the past five years.

18.2(7) Form IG-1 (gas utilities).

18.2(8) Form IE-1 (electric utilities).

18.2(9) Information regarding the location of other books, records, and accounts to be maintained or made accessible pursuant to statute or rule.

[ARC 7637C, IAB 2/21/24, effective 3/27/24]

199—18.3(476) Availability of records. All records kept pursuant to any rules of the board that are of a general corporate nature or otherwise pertain to the utility’s operations as a whole shall be made available for examination by the board during normal business hours, unless otherwise authorized by the board. Upon receipt by a utility of a formal request in writing from the board for records or information pertaining to records required by any board rule, the utility shall provide the requested information to the board within 15 days of receiving the written request from the board unless the utility files an objection to the request or a request for an extension of time within seven days of the utility’s receipt of the information request. The objection or request for extension of time shall be filed in writing and state the concise grounds for relief. If the board finds that the objection or request for extension of time does not have merit, the information originally requested shall be provided immediately upon receiving notice of the board’s decision.

[ARC 7637C, IAB 2/21/24, effective 3/27/24]

199—18.4(476) Electric utilities other than rural electric cooperatives.

18.4(1) Units of property. Rate-regulated electric utilities shall maintain an accounting system for Units of Property in Accounting for Additions and Retirements of Electric Plant in accordance with the “Uniform systems of accounts—electric rules” rule in 199—Chapter 16.

18.4(2) Preservation of records. All electric utilities subject to regulation by the board shall preserve the records of their operations in accordance with the provisions of Part 125 of the FERC rules, 18 CFR Part 125, Preservation of Records of Public Utilities and Licensees, as issued on August 15, 2000. Rate-regulated companies shall further ensure the preservation of records of associated

companies, whether or not the associated companies are themselves utilities, as necessary to support the cost of services rendered to the utility by the associated companies.

[ARC 7637C, IAB 2/21/24, effective 3/27/24]

199—18.5(476) Rural electric cooperatives.

18.5(1) *Units of property.* Rural electric cooperatives (RECs) subject to rate regulation by the board shall adopt the RUS rules contained in 7 CFR Part 1767 published May 27, 2008. The REC shall maintain sufficient records to support additions to plant, retirement units, and replacements of electric plant, in accordance with 7 CFR Section 1767.10, Definitions; 7 CFR Section 1767.15, General Instructions; 7 CFR Section 1767.16, Electric Plant Instructions; and 7 CFR Section 1767.20, Plant Accounts.

18.5(2) *Preservation of records.* RECs shall preserve the records of their operations in accordance with the provisions of the RUS rules contained in RUS Bulletin 180-2, Record Retention Recommendations for RUS Electric Borrowers, issued June 26, 2003.

[ARC 7637C, IAB 2/21/24, effective 3/27/24]

199—18.6(476) Gas utilities.

18.6(1) *Units of property.* Rate-regulated gas utilities shall maintain an accounting system for Units of Property in Accounting for Additions and Retirements of Gas Plant in accordance with the “Uniform systems of accounts—electric rules” rule in 199—Chapter 16.

18.6(2) *Preservation of records.* All gas utilities subject to regulation by the board shall preserve the records of their operations in accordance with the provisions of FERC rules, 18 CFR Part 225, Preservation of Records of Natural Gas Companies, as issued August 15, 2000. Rate-regulated companies shall further ensure the preservation of records of associated companies, whether or not the associated companies are themselves utilities, as necessary to support the cost of services rendered to the utility by the associated companies.

[ARC 7637C, IAB 2/21/24, effective 3/27/24]

199—18.7(476) Water, sanitary sewage, and storm water drainage utilities.

18.7(1) *Units of property.* Rate-regulated water, sanitary sewage, and storm water drainage utilities shall maintain an accounting system for Units of Property in Accounting for Additions and Retirements of Water Plant in accordance with the “Uniform systems of accounts—electric rules” rule in 199—Chapter 16.

18.7(2) *Preservation of records.* All water, sanitary sewage, and storm water drainage utilities subject to regulation by the board shall preserve the records of their operations in accordance with the provisions of the NARUC guidelines: Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities, revised October 2007 edition. Regulated water, sanitary sewage, and storm water drainage utilities shall further ensure the preservation of records of associated companies, whether or not the associated companies are themselves utilities, as necessary to support the cost of services rendered to the utility by the associated companies.

[ARC 7637C, IAB 2/21/24, effective 3/27/24]

These rules are intended to implement Iowa Code sections 476.31 and 546.7.

[Filed 11/16/65; amended 1/11/66]

[Filed 9/30/77, Notice 6/29/77—published 10/19/77, effective 11/23/77]

[Filed 5/20/83, Notice 4/13/83—published 6/8/83, effective 7/13/83]

[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]

[Filed 2/28/90, Notice 12/13/89—published 3/21/90, effective 4/25/90]

[Filed 12/23/96, Notice 8/28/96—published 1/15/97, effective 2/19/97]

[Filed 6/6/03, Notice 12/25/02—published 6/25/03, effective 7/30/03]

[Filed ARC 4273C (Notice ARC 3913C, IAB 8/1/18), IAB 1/30/19, effective 3/6/19]

[Filed ARC 7637C (Notice ARC 7123C, IAB 11/29/23), IAB 2/21/24, effective 3/27/24]

CHAPTER 1
ORGANIZATION

486—1.1(10A) Organization.

1.1(1) The employment appeal board is comprised of three members appointed by the governor, subject to confirmation of the senate. The members are appointed pursuant to Iowa Code section 10A.601(2) to represent the interests of employers, employees, and the general public.

1.1(2) The employment appeal board's offices are located at 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. The office hours are 8 a.m. to 4:30 p.m. Monday through Friday. The office is closed on all state holidays.

1.1(3) The board shall meet the first Monday in May of even-numbered years to select a chairperson and vice-chairperson.

1.1(4) The board shall meet not less than once per month to vote and decide cases which are eligible for review or decision. The meetings are open to the public pursuant to the open meetings law. The board shall also meet at the call of the chairperson or vice-chairperson.

[Editorial change: IAC Supplement 2/21/24]

486—1.2(10A) Jurisdiction and filing of appeals.

1.2(1) The employment appeal board has authority to hear appeals or to review records on appeal in the following areas:

1. Department of personnel actions under Iowa Code chapter 19A.
2. Peace officer and capitol security discharges under Iowa Code chapter 80.
3. Occupational Safety and Health Act citations under Iowa Code chapter 88.
4. Elevator code citations under Iowa Code chapter 89A.
5. Contractor registration citations under Iowa Code chapter 91C.
6. Unemployment insurance appeals under Iowa Code chapter 96.
7. IPERS appeals under Iowa Code chapter 97B.

1.2(2) The procedures for filing appeals in the above areas and the time for filing such appeals are specified in each of the following chapters pertaining to a specific area.

1.2(3) In all instances, appeals may be filed by mailing the appeal, filing the appeal in person, or faxing the appeal to the employment appeal board at 515.281.7191. The address for the employment appeal board is Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

[Editorial change: IAC Supplement 2/21/24]

These rules are intended to implement Iowa Code section 10A.601.

[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]

[Filed 2/16/89, Notice 11/16/88—published 3/8/89, effective 4/12/89]

[Filed 6/29/98, Notice 4/8/98—published 7/29/98, effective 9/2/98]

[Filed 4/25/03, Notice 3/19/03—published 5/14/03, effective 6/18/03]

[Editorial change: IAC Supplement 2/21/24]

CHAPTER 3
UNEMPLOYMENT INSURANCE APPEALS

486—3.1(10A) Appeals.

3.1(1) *Lower authority's decisions to employment appeal board.* A copy of each administrative law judge's decision, pertinent to unemployment insurance matters, shall be submitted to the employment appeal board on the date the decision is issued.

3.1(2) *Form and time of appeal.* A party aggrieved by a decision of an administrative law judge may appeal to the employment appeal board within 15 days from the date of the decision. The appeal shall state the grounds for the appeal. If sent by mail or courier, the appeal shall be addressed to Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. The appeal may also be filed in any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal is filed by fax, the original copy shall be mailed to the employment appeal board at the above address. The date of the appeal is the date of the fax transmission. Appeals may also be filed online by completing and submitting an online appeal form available on the Iowa workforce development website.

3.1(3) *Procedure when an appeal is filed.* Upon receipt of notice of appeal, the entire record before the administrative law judge shall be forwarded to the employment appeal board. One copy of the testimony and evidence received by the administrative law judge shall be mailed to the parties or their designated representative. That mailing shall be identified by a transmittal of testimony and shall provide instructions for the filing of written briefs.

3.1(4) *Additional parties.* Whenever it appears that other parties should be joined in order to dispose of all issues, the employment appeal board shall so order and notify the parties of further procedures to be followed.

3.1(5) *Consolidation of proceedings.* Any number of cases before the employment appeal board may be consolidated for hearing, argument, consideration and decision when the facts and circumstances are the same or similar and no substantial right of any party will be prejudiced.

3.1(6) *Issues on appeal.* The employment appeal board may consider any issue raised by the action pertaining to the eligibility of an individual for unemployment insurance benefits. If new issues appear, different from those which are noticed in the appeal, the board may remand such issues to an administrative law judge for appropriate action, or in the interest of prompt administration of justice and without prejudicing the substantive rights of any party, may hear and decide any issue material to the appeal, even if not specifically indicated as a ground for appeal or not noticed for the administrative hearing.

3.1(7) *New or additional evidence.*

a. An application to present new or additional evidence shall be in writing and shall be filed within ten days after the date of mailing notice to the parties that an appeal has been filed.

b. The application to present new or additional evidence shall state the nature of the evidence, the materiality of such evidence, and the reasons why such evidence was not introduced at the hearing before the administrative law judge. No such evidence shall be considered by the board unless the board has ordered it admitted.

c. Whenever the board, on its own motion, or upon the application of a party, orders the taking of new or additional evidence, the board may schedule a hearing or remand the matter to an administrative law judge. The issues at such hearing shall be limited to those issues designated by the appeal board. The parties shall be notified ten days before the date of the hearing, specifying the place and time of the hearing.

d. Whenever the board holds the hearing, the parties may introduce such evidence as may be pertinent to the issues on which the board has directed the taking of evidence. All parties shall have the right to examine and cross-examine other parties and witnesses.

e. If only documentary evidence is to be admitted, a copy of the evidence shall be mailed by the board to each of the parties, and the parties shall be granted ten days to submit written arguments on that

evidence. The party which has not submitted the new evidence may submit rebuttal evidence to the new evidence.

3.1(8) *Postponement of hearing of appeals.* Applications for postponement of hearing of appeals, scheduled before the appeal board, shall be submitted in writing at least three days before the date of the scheduled hearing, and shall be granted at the discretion of the appeal board. Each party shall be granted only one postponement, except as determined by the chairperson of the appeal board.

3.1(9) *Adjournment and continuance.* Adjournment and continuance may be granted for good cause by the appeal board. Notice of the adjournment or continuance shall be given to all parties, at their last-known address according to the division's record.

3.1(10) *Hearing of appeals.* An appeal to the board may be considered and decided based upon the evidence in the record made before the administrative law judge or the appeal board. The board may schedule a hearing to permit the parties to offer oral or written argument, or both. The parties shall be notified by the appeal board of such hearing by notice at least ten days before the date of the hearing.

3.1(11) *Remand of appeals.* The appeal board may remand any claim or claims for any issue involved in the claim or pertaining to the claim to an administrative law judge for the taking of additional evidence as the appeal board may deem necessary.

3.1(12) *Taking of evidence.* If the appeal board decides that evidence shall be taken, such evidence may be taken before the appeal board. The hearing may be conducted by the appeal board, or the board may designate an attorney employed by the appeal board to conduct such hearing. The parties shall be notified of the time and date of the hearing and shall be provided with instructions about how to participate in the hearing. The proceedings shall be recorded and made a part of the record.

3.1(13) *Written briefs and oral arguments.* The parties shall be granted the opportunity to submit written briefs on all issues to be decided. The briefs and arguments shall be submitted within seven days from the date of mailing of the transcript of testimony, in cases where an evidentiary hearing was held. In those cases where no hearing was held, the parties shall have ten days to submit written briefs and the opportunity to show good cause for not appearing. A request for extension of time to submit briefs must be made within the time set for submission of the briefs. Each party shall be granted one seven-day extension without justification. Requests for second extensions must be for good cause and will be granted at the discretion of the chairperson of the appeal board.

The appeal board may afford the parties an opportunity to present oral arguments and may limit the time of oral arguments. Requests to present oral arguments shall be submitted within ten days from the date of mailing of the acknowledgment of appeal and shall state the reasons for the oral argument.

3.1(14) *Nonappearance at appeal hearing.* If the appellant fails to appear at a scheduled hearing and does not submit good cause for failing to appear within ten days from the date of the hearing, the appeal board shall issue a decision based upon the evidence contained in the record.

3.1(15) *Withdrawal of appeal.* Any appeal may be withdrawn by the appellant, by written request, anytime before a decision is issued by the appeal board. If a request is made, the appeal shall be dismissed. An appeal so dismissed may be reinstated by the appeal board if the appellant files a written request to reinstate and shows that the request for withdrawal resulted from misinformation given by the workforce development department, unemployment insurance division, or for other good cause shown, as determined by the appeal board. A request for reinstatement shall be made within 60 days after the mailing of the decision dismissing the appeal or, in the event of fraud, within 60 days after discovery of the fraud.

3.1(16) *Late appeals.* The appeal board shall dismiss appeals which are not filed within 15 days from the date of the administrative law judge's decision, unless good cause for the delay has been shown.
[ARC 1358C, IAB 3/5/14, effective 4/9/14; Editorial change: IAC Supplement 2/21/24]

486—3.2(10A) Removals.

3.2(1) Within ten days following the decision of an administrative law judge, and in the absence of a filing of a notice of appeal to the appeal board by any of the parties from a decision of the administrative law judge, the appeal board on its own motion may order the parties to appear before the board for a hearing on the claim or any issue involved therein.

3.2(2) Such hearings shall be held only after notice, mailed to the parties ten days from the date of the removal of the case to the appeal board.

3.2(3) The proceedings on any claim before an administrative law judge ordered by the appeal board to be removed to itself shall be presented, heard, and decided by the appeal board in the manner prescribed for the hearing of appeals before an administrative law judge. The appeal board may review the evidence already contained in the record, giving the parties time to file written briefs and arguments, and issue a decision based upon that evidence.

486—3.3(10A) Appeal board decisions.

3.3(1) An appeal shall be decided based upon the evidence contained in the entire record before the administrative law judge, including the testimony of the hearing before the administrative law judge, together with any oral or written arguments presented to the board. Should the appeal board order additional evidence be admitted to the record, that evidence and briefs pertaining to that evidence shall be considered.

3.3(2) Following the review of an appeal or the conclusion of a hearing on appeal, the appeal board shall, within a reasonable time, render a written decision. The decision shall be signed by the members of the appeal board who reviewed the appeal, and a copy of said decision shall be filed in the offices of the employment appeal board. All decisions of the appeal board shall be filed in the offices of the unemployment insurance division of the workforce development department.

3.3(3) A quorum of two members of the appeal board must be present when any decision is made by the appeal board. Should there be only two members present and those two members cannot agree upon the decision, the case shall be issued as a split decision and the decision of the administrative law judge shall be affirmed by operation of law.

3.3(4) If a decision of the appeal board is not unanimous, the decision of the majority shall control. A majority shall be two members. The minority member may file a dissent from such decision setting forth the reasons why that member fails to agree with the majority. The appeal board, in its discretion, may omit the giving of any reasons for its decision on cases in which the decision of an administrative law judge is affirmed without any alteration or modification.

3.3(5) Copies of the decision shall be mailed to all parties to the appeal. The decision shall specify the parties' appeal rights.

3.3(6) The appeal board's decision shall become the final decision of the unemployment insurance division of the workforce development department 30 days after the decision is mailed to all interested parties of record. The date of mailing shall be affixed to the decision immediately below the signatures of the board members reviewing the decision. Any party may file an application for rehearing within 20 days of the date of the board's decision.

3.3(7) The appeal board's decision on an application for rehearing shall be final and without further review 30 days after the date the decision is mailed to the parties of record, unless within that 30 days a petition for judicial review is filed in the appropriate district court.

3.3(8) An application for rehearing shall be deemed denied unless the appeal board acts upon that application within 20 days of its filing date with the appeal board. A petition for judicial review may be filed within 30 days of the date of the appeal board's decision without the necessity of filing an application for rehearing.

3.3(9) After a decision of the appeal board has become final, the matter shall not be reopened, reconsidered, or reheard. The decision shall not be changed except to correct obvious clerical errors in the decision.

486—3.4(10A) Rehearing of the appeal board decision.

3.4(1) Solely on showing of good cause, the appeal board may, upon application by a party, reopen and review any prior decision, provided the application for rehearing is filed within 20 days from the date of the issuance of the prior decision.

3.4(2) The application shall be in writing, stating specific grounds therefor and the specific relief sought. Copies of such application shall be mailed, by the appeal board, to all parties of record not joining in the application.

3.4(3) In determining whether good cause exists for the appeal board to rehear a prior decision, the following factors shall be considered:

a. Whether the application presents newly discovered evidence or facts which are not cumulative, corroborative, or material to the issue decided and are not of sufficient weight to cause a reversal or change in the appeal board's decision.

b. Prior to and at the time of the appeal board's decision, such new information must not have been available through reasonable search by the applicant and must not have been previously considered in any prior appeals decision.

c. When the application presents evidence that benefits were allowed or denied, or the amount of benefits was fixed on the basis of nondisclosure or a misrepresentation of material fact.

3.4(4) If the application for rehearing is granted, the record shall be reopened and the matter may be remanded to an administrative law judge to allow the taking of further testimony and the establishment of further or new findings of fact. The matter then may be transferred to the appeal board for final action. The appeal board may admit documentary evidence or take additional testimony and then reissue a decision based upon the entire record.

3.4(5) The application for rehearing shall be deemed denied unless the appeal board takes action to grant or deny the application within 20 days from the date of the filing of the application.

3.4(6) If the application for rehearing is denied, all administrative remedies shall have been exhausted and the applicant may petition the appropriate district court for review pursuant to Iowa Code section 17A.19.

486—3.5(10A) Disqualification of appeal board members.

3.5(1) No appeal board member shall participate in any hearing in which the member has an interest which might affect the ultimate decision.

3.5(2) A challenge to the interest of an appeal board member may be made in writing at any time prior to the date the appeal board's decision becomes final.

3.5(3) Such challenge shall be filed with the chairperson of the appeal board and will be heard by the unchallenged members of the appeal board. A tie vote shall result in dismissing the challenge.

3.5(4) In the event one or more members of the appeal board are absent or otherwise disqualified, the case will be reviewed by the remaining members. A tie vote will result in affirming the administrative law judge's decision by operation of law.

486—3.6(10A) Public hearing. All hearings and meetings of the employment appeal board shall be open to the public except where the provisions of Iowa Code section 20.5 apply.

486—3.7(10A) Specific rules applicable to unemployment insurance claims.

3.7(1) Investigations.

a. Whenever, in the course of an appeal, an investigation, inquiry, payroll audit or other examination appears necessary for a proper determination of a case, the appeal board may request such investigation, inquiry, payroll audit, or other examination through the appropriate department.

b. Hearings on the appeal shall be continued or adjourned pending the completion of such investigation, inquiry, or examination.

c. The right to be informed of, to cross-examine, to inspect, and to rebut the results of the investigation, inquiry, or examination shall be preserved to all parties to the appeal.

3.7(2) Information to be furnished.

a. Information from the records of the workforce development department, unemployment insurance division, shall be furnished to a party or the party's representative to the extent necessary for the proper presentation of an appeal upon application.

b. Applications for information from records of the division shall state the nature of the information desired.

3.7(3) *Payment of benefits.* If the appeal board's decision allows benefits by reversing or modifying an administrative law judge's decision, benefits shall be promptly paid. The filing of an application for a rehearing or for judicial review shall not stay the effect of the appeal board's decision.

3.7(4) *Redeterminations.*

a. If a claim has been decided under the gross misconduct section of the Iowa Code, a redetermination may be made anytime within five years of the effective date of the claim, even though a final decision has been made by the appeal board.

b. The redetermination may be appealed to the appeal board.

c. If the redetermination results in a reversal of an allowance of benefits and holds that the claimant was discharged for an act of gross misconduct, all benefits paid to the claimant prior to the redetermination shall be assessed as an overpayment and shall be collectible in the manner provided in Iowa Code section 96.14(3) for the collection of past due contributions.

d. If the redetermination results in an allowance of benefits by reversing a previously imposed disqualification for gross misconduct, the claimant shall be paid benefits for all weeks for which the claimant has submitted a continued claim report form.

e. A request for a redetermination may be made only by an interested party to the original case which resulted in the determination, decision, or final decision of the appeal board under the gross misconduct section.

3.7(5) *Workforce development department employees as witnesses.*

a. Those employees of the workforce development department directly involved in handling the claim which resulted in the appeal may be called to testify by the appeal board.

b. The employee having direct knowledge of the local job market may be called as a witness by the appeal board to testify concerning the wages, hours and other conditions of employment relating to the particular job and job market involved in the appeal.

c. The employer to whom an applicant is referred for work or who offers work or recall to work of an individual claiming unemployment insurance benefits shall be named in the appeal and shall receive all applicable notices and decisions.

486—3.8(10A) Retention of records. Records of proceedings in contested cases, appealed to the employment appeal board, shall be retained:

1. Sixty days following the final date for an appeal to the district court.
2. Sixty days following the entry of a final order by the district court.
3. Sixty days following the filing of the decision of the court of appeals.
4. Sixty days following the filing of an opinion by the supreme court.

Other records of the employment appeal board may be retained as determined by the board.

Records of cases involving federal appeals or those cases which are governed by federal law or rules shall be retained as determined by federal regulation pertaining to the case.

These rules are intended to implement Iowa Code section 10A.601.

[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]

[Filed 2/16/89, Notice 11/16/88—published 3/8/89, effective 4/12/89]

[Filed 12/10/93, Notice 9/29/93—published 1/5/94, effective 2/9/94]

[Filed 6/29/98, Notice 4/8/98—published 7/29/98, effective 9/2/98]

[Filed 4/25/03, Notice 3/19/03—published 5/14/03, effective 6/18/03]

[Filed ARC 1358C (Notice ARC 1269C, IAB 1/8/14), IAB 3/5/14, effective 4/9/14]

[Editorial change: IAC Supplement 2/21/24]

CHAPTER 4
RULES OF PROCEDURE FOR OSHA APPEALS

DIVISION I
GENERAL PROVISIONS

[Prior to 9/7/88 Occupational Safety and Health Review Commission[610] Ch 1]

486—4.1(10A,88) Definitions as used herein.

“*Act*” means the Iowa Occupational Safety and Health Act, Iowa Code chapter 88.

“*Administrative law judge*” means an administrative hearing officer with the appeals and fair hearings division, department of inspections and appeals.

“*Affected employee*” means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of assigned duties.

“*Authorized employee representative*” means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

“*Citation*” means a written communication issued by the commissioner of labor to an employer pursuant to Iowa Code section 88.7.

“*Commissioner of labor*” means the commissioner of labor or duly authorized representative.

“*Day*” means a calendar day.

“*Employment appeal board*” means the three-member employment appeal board.

“*Notification of proposed penalty*” means a written communication issued by the commissioner of labor to an employer pursuant to Iowa Code section 88.8.

“*Proceeding*” means any proceeding before the administrative law judge or the employment appeal board.

“*Representative*” means any person, including an authorized employee representative, authorized by a party or intervenor to represent that party or intervenor in a proceeding.

“*Working day*” means all days except Saturdays, Sundays, state and federal holidays.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.2(10A,88) Scope of rules—applicability of Iowa rules of civil procedure.

4.2(1) These rules shall govern all proceedings before the employment appeal board.

4.2(2) In the absence of a specific provision, procedures shall be in accordance with the Iowa rules of civil procedure.

486—4.3(10A,88) Use of number. Words importing the singular number may extend and be applied to the plural and vice versa.

486—4.4(10A,88) Computation of time.

4.4(1) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, state or federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, state or federal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, state and federal holidays shall be excluded in the computation.

4.4(2) Where service of a pleading or document is by mail pursuant to 4.7(10A,88), three days shall be added to the time allowed by these rules for the filing of a responsive pleading.

486—4.5(10A,88) Extensions of time. Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is due to be filed.

486—4.6(10A,88) Record address. The name, address, and telephone number shall be included in the initial pleading filed by any party or intervenor. Any change in such information must be communicated promptly in writing to the employment appeal board and to all other parties and intervenors. Parties or

intervenor who fail to furnish such information shall be deemed to have waived their rights to notice and service under these rules.

486—4.7(10A,88) Service and notice.

4.7(1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

4.7(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

4.7(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

4.7(4) Proof of service on other parties and intervenors shall be accomplished by a written statement which sets forth the date and manner of service. Such statements shall be filed with the pleading or document.

4.7(5) Where service is accomplished by posting, proof of posting shall be filed not later than the first working day following the posting.

4.7(6) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in 4.7(3).

4.7(7) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of docketing of the notice of contest, post, where the citation is required to be posted by the labor services division rules, a copy of the notice of contest and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subrule:

(Name of Employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act. The citation has been contested and will be the subject of a hearing before an administrative law judge designated by the employment appeal board. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the employment appeal board in its rules of procedure. Notice of intent to participate should be sent at the earliest opportunity to: Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near the workplace).

4.7(8) The authorized employee representative, if any, shall be served with the notice set forth in 4.7(7) and with a copy of the notice of contest.

4.7(9) A copy of the notice of the hearing to be held before the administrative law judge shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

4.7(10) A copy of the notice of the hearing to be held before the administrative law judge or the employment appeal board shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in 4.7(3), if the employer has not been informed that the authorized employee representative has entered an appearance as of the date notice is received by the employer.

4.7(11) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with 4.35(10A,88) of this division, serve a copy thereof on such authorized employee representative in the manner prescribed in 4.7(3) and shall file proof of such service.

4.7(12) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in 4.7(7).

4.7(13) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

4.7(14) Where posting is required by this rule, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

4.7(15) When settlement agreements are filed with the employment appeal board they shall be posted for ten days at or near the place where the citation is required to be posted.

4.7(16) If any party or intervenor fails to comply with the notice requirements of these rules, the employment appeal board may issue appropriate orders.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

[Editorial change: IAC Supplement 2/21/24]

486—4.8(10A,88) Filing.

4.8(1) All papers shall be filed with the Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

4.8(2) Unless otherwise ordered, all filing may be accomplished by first-class mail.

4.8(3) Filing is deemed effected at the time of mailing.

[Editorial change: IAC Supplement 2/21/24]

486—4.9(10A,88) Consolidation. Cases may be consolidated on the motion of any party or intervenor or on the employment appeal board's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

This rule is intended to implement Iowa Code section 10A.601 and chapter 88.

486—4.10(10A,88) Severance. Upon its own motion, or upon motion of any party or intervenor, the employment appeal board may, for good cause, order any proceeding severed with respect to some or all issues or parties.

486—4.11(10A,88) Protection of trade secrets and other confidential information.

4.11(1) Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by Iowa Code section 88.12, the employment appeal board or the administrative law judge shall issue such orders as may be appropriate to protect the confidentiality of such matters.

4.11(2) Interlocutory appeal to the employment appeal board from an adverse ruling by the administrative law judge under this rule shall be granted as of right.

486—4.12 to 4.19 Reserved.

DIVISION II
PARTIES AND REPRESENTATIVES

486—4.20(10A,88) Party status.

4.20(1) Affected employees or authorized employee representatives may elect to participate as parties at any time before the commencement of the hearing, unless, for good cause shown, the employment appeal board allows such election at a later time. See also 4.21(10A,88).

4.20(2) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing. See also 4.21(10A,88).

This rule is intended to implement Iowa Code sections 88.8(3) and 10A.601.

486—4.21(10A,88) Intervention—appearance by nonparties.

4.21(1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing.

4.21(2) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

4.21(3) The employment appeal board or the administrative law judge may grant a petition for intervention to such an extent and upon such terms as the employment appeal board or the administrative law judge shall determine.

486—4.22(10A,88) Representatives of parties and intervenors.

4.22(1) Any party or intervenor may appear in person or through a representative.

4.22(2) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

4.22(3) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

4.22(4) Nothing contained herein shall be construed to require any representative to be an attorney at law.

4.22(5) Withdrawal of appearance of any representatives may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

486—4.23 to 4.29 Reserved.

DIVISION III
PLEADINGS AND MOTIONS

486—4.30(10A,88) Form.

4.30(1) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with 4.31(10A,88), which shall include the employment appeal board's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

4.30(2) It is recommended that pleadings and other documents (other than exhibits) be typewritten, double spaced, on standard size paper (approximately 8½ inches by 11 inches), have adequate margins and be securely fastened.

4.30(3) Pleadings shall be signed by the person filing or by the person's representative. Such signing constitutes a representation that the signer has read the document or pleading, that to the best of the signer's knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

4.30(4) The employment appeal board may refuse for filing any pleading or document which does not comply with the requirements of 4.30(1), 4.30(2) and 4.30(3).

4.30(5) After an appeal or the notice of contest has been filed, additional filings or documents may be sent by facsimile transmission (fax). A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax shall be the date the document is received by the EAB. The EAB will not provide a mailed, file-stamped copy of documents filed by fax.

486—4.31(10A,88) Caption—titles of cases.

4.31(1) Cases initiated by a notice of contest shall be titled: Commissioner of Labor, Complainant v. (Name of Contestant), Respondent.

4.31(2) Cases initiated by a petition for modification of the abatement period shall be titled: (Name of Employer), Petitioner v. Commissioner of Labor, Respondent.

4.31(3) The titles listed in 4.30(1) and 4.30(2) shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

4.31(4) The first page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the caption, the docket number, if known, assigned to the case.

486—4.32(10A,88) Notices of contest. The commissioner of labor shall, within seven days of receipt of a notice of contest, transmit the original to the employment appeal board, together with copies of all relevant documents.

486—4.33(10A,88) Employer contests.

4.33(1) Complaint.

a. The commissioner of labor shall file a complaint with the employment appeal board no later than 20 days after receipt of notice of contest.

b. The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

- (1) The basis for jurisdiction;
- (2) The time, location, place, and circumstances of each alleged violation; and
- (3) The considerations upon which the period for abatement and the proposed penalty on each such alleged violation are based.

c. Where the commissioner of labor seeks in the complaint to amend the citation or proposed penalty, the commissioner of labor shall set forth the reasons for amendment and shall state with particularity the change sought.

4.33(2) Answer.

a. Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the employment appeal board.

b. The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest.

486—4.34(10A,88) Response to motions. Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response.

486—4.35(10A,88) Failure to file. Failure to file any pleading pursuant to these rules when due may, in the discretion of the employment appeal board, constitute a withdrawal of the citation or the notice of contest. The employment appeal board may, after opportunity for hearing of excuses for failure to file, enter a final or proposed final order defaulting the party and disposing of the case without regard to the merits of the alleged violation.

This rule is intended to implement Iowa Code section 10A.601 and chapter 88.

486—4.36(10A,88) Petitions for modification of abatement period.

4.36(1) An employer may file a petition for modification of abatement period with the commissioner of labor when such employer has made a good faith effort to comply with the abatement requirements of a citation, but abatement has not been completed because of factors beyond the employer's reasonable control.

4.36(2) A petition for modification of abatement period shall be filed with the commissioner of labor no later than the close of the next working day following the date on which abatement was originally required. A letter-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

4.36(3) A petition for modification of abatement period shall be in writing and shall include the following information:

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

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

c. The reason such additional time is necessary in order to achieve compliance.

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

e. Certification by the employer that it has posted a copy of the petition for modification of abatement period, and a notice informing affected employees of their right to intervene and of the

availability of all pleadings for inspection and copying at reasonable times. Service of the above documents upon any authorized employee representative shall also be certified by the employer. A notice in the following form shall be deemed to comply with this subrule:

(Name of employer)

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

4.36(4) The commissioner of labor shall have the authority to approve a petition for modification of abatement period filed in accordance with subrules 4.34(2) and 4.36(3), but the commissioner of labor shall not exercise approval power until the expiration of 15 working days from the date the petition and notice were first posted pursuant to 4.36(3) "e" and 4.36(5). Uncontested approved petitions shall be deemed final orders of the employment appeal board.

4.36(5) The employer shall post a copy of the petition and a notice of employee rights complying with 4.36(3) "e" before filing a petition with the commissioner of labor. Such posting shall be in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition and notice of employee rights shall remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition.

4.36(6) Affected employees or their representatives may file an objection in writing to the petition with the commissioner of labor. Failure to file an objection within ten working days of the date of posting of the petition or of service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

4.36(7) Where an objection is filed by an affected employee or authorized employee representative, a copy of that objection shall be provided to the employer for posting along with the documents specified in 4.36(5). An authorized employee representative who files an objection shall serve any other authorized employee representative whose members are affected employees.

4.36(8) Where any petition is objected to by affected employees or by the commissioner of labor, such petition shall be processed as follows:

a. The petition, citation, and objections shall be forwarded to the employment appeal board within 3 working days after the expiration of the 15-working-day period set out in 4.36(4).

b. The employment appeal board shall docket and process such petition as an emergency proceeding under 4.101(3).

c. An employer petitioning for modification of an abatement period shall have the burden of proving that it has made a good faith effort to comply with the abatement requirements of the citation and abatement has not been completed because of factors beyond its reasonable control.

d. Within ten days after receipt of the notice of docketing by the employment appeal board, each objecting party or intervenor may file a response to the petition or a statement of position regarding the petition with the employment appeal board.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.37(10A,88) Employee contests.

4.37(1) Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the commissioner of labor shall, within ten days from receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed is not unreasonable.

4.37(2) Not later than ten days after receipt of the commissioner of labor's statement, the contestant shall file a response.

4.37(3) Pursuant to Iowa Code section 88.8(3), the employee's notice of contest must be filed within 15 days of the issuance of the citation.

4.37(4) All contests under this rule shall be handled as an expedited proceeding under 4.101(3). This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.38 to 4.49 Reserved.

DIVISION IV
PREHEARING PROCEDURES AND DISCOVERY

486—4.50(10A,88) Withdrawal of notice of contest, citation or complaint. At any stage of the proceedings, for good cause shown, a party may withdraw the notice of contest, the citation, or complaint, subject to the approval of the employment appeal board.

486—4.51(10A,88) Prehearing conference.

4.51(1) At any time before a hearing, the employment appeal board, on its own motion or on motion of a party, may direct the parties and intervenors or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues to expedite the proceedings.

4.51(2) The employment appeal board may issue a prehearing order which includes the agreements reached by the parties and intervenors. Such order shall be served on all parties and intervenors and shall be a part of the record.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.52(10A,88) Requests for admissions.

4.52(1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within 30 days after service of the request, or within such shorter or longer time as the employment appeal board may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

4.52(2) Copies of all requests and responses shall be served on all parties and intervenors in accordance with the provisions of 4.7(1) and filed with the employment appeal board within the time allotted and shall be a part of the record.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.53(10A,88) Discovery.

4.53(1) Pursuant to Iowa Code subsection 17A.13(1), discovery procedures applicable to civil actions shall be available to all parties in contested cases before the employment appeal board.

4.53(2) Where there is a failure to comply with any proper method of discovery permitted under these rules, the party seeking discovery may apply to the employment appeal board for an order compelling discovery.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.54(10A,88) Failure to comply with orders for discovery. If any person fails to comply with an order of the employment appeal board to permit discovery in accordance with the provisions of these rules, the employment appeal board may issue appropriate orders.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.55(10A,88) Issuance of subpoenas—petitions to revoke or modify subpoenas—right to inspect or copy data.

4.55(1) The employment appeal board shall, on the application of any party directed to the employment appeal board, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in their possession or under their control. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued. The requesting party shall be responsible for service of the subpoenas.

4.55(2) Any person served with a subpoena shall, at any time prior to the hearing, move in writing to revoke or modify the subpoena if that person does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The employment appeal board shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law, the subpoena is otherwise invalid. The employment appeal board shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

4.55(3) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of, transcripts of the data or evidence submitted by them.

4.55(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the employment appeal board shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. The employment appeal board shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

486—4.56 to 4.59 Reserved.

DIVISION V
HEARINGS

486—4.60(10A,88) Notice of hearing. Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten days in advance of such hearing, except as otherwise provided in 4.101(10A,88).

486—4.61(10A,88) Postponement of hearing.

4.61(1) Postponement of a hearing ordinarily will not be allowed, unless a case of extreme emergency exists or a request is made in writing at least three days in advance of the date set for the hearing.

4.61(2) No postponement in excess of 30 days shall be allowed without employment appeal board approval.

486—4.62(10A,88) Failure to appear.

4.62(1) Subject to the provisions of 4.62(2), the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the employment appeal board or to appeal the decision.

4.62(2) The employment appeal board, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.63(10A,88) Payment of witness fees and mileage—fees of persons taking depositions. Witnesses summoned before the employment appeal board shall be paid the same fees and mileage that are paid witnesses in the district courts of the state of Iowa, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are

paid for like services in the district courts of the state of Iowa. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

486—4.64(10A,88) Reporter's fees. Reporter's fees shall be borne by the party or intervenor requesting a court reporter, unless the employment appeal board provides for a court reporter. Transcript costs shall be borne by the person requesting a transcript.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.65(10A,88) Transcript of testimony.

4.65(1) Hearings shall be electronically recorded. A record of testimony taken at the hearing shall be filed in the employment appeal board office.

4.65(2) The employment appeal board's recording or transcript of the hearing shall be available to any interested person for examination at reasonable times without cost. Upon receipt of a copy of a petition filed in a district court of Iowa praying that an order of the employment appeal board be modified or set aside pursuant to Iowa Code section 88.9, the employment appeal board shall either:

- a. Have the electronic recording transcribed, certify the transcript, and file it with the court, if no court reporter recorded the hearing, or
- b. Contract with the court reporter to transcribe the reporter's notes; in which case the reporter shall certify the transcript and deliver the transcript to the employment appeal board for filing with the court.

486—4.66(10A,88) Duties and powers of the employment appeal board or administrative law judge. It shall be the duty of the employment appeal board or the administrative law judge to conduct a fair and impartial hearing, to ensure that the facts are fully elicited, to adjudicate all issues and avoid delay. The employment appeal board or the administrative law judge shall have authority to:

1. Administer oaths and affirmations;
2. Issue authorized subpoenas;
3. Rule upon petitions to revoke subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the needs of justice would be served;
6. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
7. Hold conferences for the settlement or simplification of the issues;
8. Dispose of procedural requests or similar matters, including motions and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of its decisions;
9. Reserved.
10. Call and examine witnesses and to introduce into the record documentary or other evidence;
11. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
12. Adjourn the hearing as the needs of justice and good administration require;
13. Take any other action necessary under the foregoing and authorized by the Act and published rules of the employment appeal board.

486—4.67(10A,88) Disqualification of member of employment appeal board or administrative law judge.

4.67(1) Members of employment appeal board or the administrative law judge may withdraw from a proceeding whenever they deem themselves disqualified.

4.67(2) Any party may request any member of the employment appeal board or the administrative law judge before the filing of the decision to withdraw on grounds of personal bias or disqualification,

by filing with the employment appeal board or the administrative law judge promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

4.67(3) If, in the opinion of the employment appeal board or the administrative law judge, the affidavit referred to in 4.67(2) is filed with due diligence and is sufficient on its face, the employment appeal board member or the administrative law judge shall forthwith withdraw from the proceeding.

4.67(4) If the employment appeal board member or the administrative law judge does not withdraw from the proceeding, the employment appeal board or the administrative law judge shall so rule upon the record, stating the grounds for so ruling and shall proceed with the hearing, or if the hearing is closed, shall proceed with the issuance of a decision, and the provisions of 4.90(10A,88) shall thereupon apply.

486—4.68(10A,88) Examination of witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

486—4.69(10A,88) Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

486—4.70(10A,88) Deposition in lieu of oral testimony—application—procedures—forms—rulings.

4.70(1) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected the witness will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as “the officer”). Such application shall be filed with the employment appeal board and shall be served on all other parties and intervenors. Where good cause has been shown, the employment appeal board shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

4.70(2) Such deposition shall be taken pursuant to the Iowa rules of civil procedure.

4.70(3) The officer shall immediately deliver the transcript, together with a certificate in person, or by registered mail to the Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

4.70(4) The employment appeal board or administrative law judge shall rule upon the admissibility of the deposition or any part thereof.

4.70(5) All errors or irregularities in compliance with the provision of this rule shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

4.70(6) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

[Editorial change: IAC Supplement 2/21/24]

486—4.71(10A,88) Exhibits.

4.71(1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

4.71(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the employment appeal board or administrative law judge pursuant to 4.72(10A,88).

4.71(3) Unless the employment appeal board or administrative law judge finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

4.71(4) All exhibits offered but denied admission into evidence shall be identified as in 4.71(1) and shall be placed in a separate file designated for rejected exhibits.

486—4.72(10A,88) Rules of evidence. Hearings before the employment appeal board or administrative law judge shall be in accordance with these rules and insofar as practicable shall be governed by the rules of evidence applicable in the Iowa district courts. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for their serious affairs, and it may be based upon such evidence even if it would not be admissible in a jury trial.

486—4.73(10A,88) Burden of proof.

4.73(1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner of labor.

4.73(2) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

486—4.74(10A,88) Objections.

4.74(1) Any objections with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the administrative law judge may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

4.74(2) Whenever evidence is excluded from the record, the person offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

486—4.75 Reserved.

486—4.76(10A,88) Filing of briefs and proposed findings with the employment appeal board or the administrative law judge—oral argument at the hearing. Any party or intervenor shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the electronically or stenographically recorded report of the hearing. Any party or intervenor shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the employment appeal board or administrative law judge. The employment appeal board or administrative law judge may fix a reasonable period of time for such filing.

486—4.77(10A,88) Conduct of persons attending meetings or hearing.

4.77(1) The employment appeal board or the administrative law judge may exclude a person from an open meeting or hearing for behavior that obstructs an orderly meeting or hearing.

4.77(2) Cameras and recording devices shall be placed and used within the hearing room in a manner that will not obstruct the meeting or hearing. Use of artificial lighting for filming for photographic purposes shall not be allowed during the course of the hearing. If the user of the camera or recording device violates this rule, the employment appeal board or administrative law judge may order the person excluded from the meeting or hearing.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.78 to 4.89 Reserved.

DIVISION VI
POSTHEARING PROCEDURES

486—4.90(10A,88) Decisions of employment appeal board or administrative law judge.

4.90(1) When the employment appeal board presides at the reception of the evidence in a contested case, the decision of the employment appeal board is a final decision.

4.90(2) When the employment appeal board did not preside at the reception of the evidence in a contested case, the administrative law judge shall make a proposed decision. When the administrative

law judge makes a proposed decision, that decision then becomes the final decision of the employment appeal board without further proceedings unless there is an appeal to, or review on motion of, the employment appeal board within 20 days. Findings of fact shall be prepared by the administrative law judge after the reception of the evidence in a contested case unless the administrative law judge becomes unavailable to the employment appeal board. If the administrative law judge is unavailable, the findings of fact may be prepared by another person qualified to be an administrative law judge who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the administrative law judge is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

4.90(3) On appeal from or review of the proposed decision or declaratory ruling, the employment appeal board has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the employment appeal board, an opportunity shall be afforded to each party to file exceptions, present briefs and, with the consent of the employment appeal board, present oral arguments to the employment appeal board members who are to render the final decision.

4.90(4) A proposed or final order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact, conclusions of law, and an order, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If, in accordance with these rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

4.90(5) Parties and intervenors shall be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order.

4.90(6) Employers shall post a copy of the decision and proposed or final order for a period of 30 days for the information of affected employees.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.91 Reserved.

486—4.92(10A,88) Stay or rehearing of final order.

4.92(1) Any party or intervenor aggrieved by a final order of the employment appeal board may, while the matter is within the jurisdiction of the employment appeal board, file a motion for a stay or a rehearing.

4.92(2) Such motion shall set forth the reasons a stay or rehearing is sought and the specific relief requested.

4.92(3) The employment appeal board may order such relief or may vary the relief as it deems appropriate.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.93 to 4.99 Reserved.

DIVISION VII
MISCELLANEOUS PROVISIONS

486—4.100(10A,88) Settlement.

4.100(1) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

4.100(2) Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in 4.7(10A,88). Proof of such service shall accompany the proposed settlement agreement when submitted to the employment appeal board.

4.100(3) Parties and intervenors shall have ten days from the date of service to object to a settlement agreement.

4.100(4) Settlement agreements shall be filed with the employment appeal board to permit final disposition of the contested case.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.101(10A,88) Emergency proceeding.

4.101(1) Upon the application of any party or intervenor, or upon its own motion, and for good cause shown, the employment appeal board may order an emergency proceeding. The party or intervenor shall include in its motion the hazards to which the employees are exposed, the probable injuries which could occur from such exposure, and the number of employees exposed to each hazard.

4.101(2) When such proceeding is ordered, the employment appeal board shall notify all parties and intervenors.

4.101(3) The employment appeal board in an emergency proceeding shall make necessary orders with respect to time for filing of pleadings and other documents and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.102(10A,88) Standards of conduct. All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Iowa. The employment appeal board or administrative law judge may take appropriate action to enforce the standards of conduct including, but not limited to, excluding persons from the hearing.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

486—4.103(10A,88) Ex parte communication.

4.103(1) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the employment appeal board, including any members, officer, employee, or agent of the employment appeal board who is employed in the decisional process, and any of the parties or intervenors.

4.103(2) In the event such ex parte communication occurs, the employment appeal board may make such orders or take such action as fairness requires. Upon notice and hearing, the employment appeal board may take disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

486—4.104(10A,88) Restrictions as to participation by investigative or prosecuting officers. In any proceeding noticed pursuant to the rules in Chapter 4, the commissioner of labor shall not participate or advise with respect to the employment appeal board's decision except as permitted by these rules.

486—4.105(10A,88) Inspection and reproduction of documents.

4.105(1) Subject to the provisions of law restricting public disclosure of information, any person may, at the office of the employment appeal board, inspect and copy any document filed in any proceeding.

4.105(2) Costs shall be borne by such person.

486—4.106(10A,88) Restrictions with respect to former employees.

4.106(1) No former employee of the employment appeal board or the commissioner of labor (including a member of the employment appeal board or the commissioner of labor) shall appear before the employment appeal board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which that former employee participated personally and substantially during the period of employment.

4.106(2) No former employee of the employment appeal board or the commissioner of labor (including a member of the employment appeal board or the commissioner of labor) shall appear before the employment appeal board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which that former employee was personally responsible during the period of employment, unless one year has elapsed since the termination of such employment.

486—4.107(17A) Petition for rule making.

4.107(1) Any interested person may petition the employment appeal board for the adoption, amendment, or repeal of a rule.

4.107(2) A petition for rule making shall comply with the form prescribed in 4.30(10A,88) and shall set forth in separately numbered paragraphs:

a. The text of any proposed rule or amendment, identifying the section or sections of the law or rule involved, or the rule sought to be repealed.

b. The reasons for requesting the action, including any relevant facts, opinions, or arguments.

c. A concise statement of the petitioner's interest in the subject matter.

4.107(3) Upon the filing of the petition the executive secretary shall inspect the petition to ensure substantial compliance with this rule. Petitions which fail to substantially comply with this rule shall be rejected and returned to the petitioner along with the reasons for the rejection. Petitioner may then correct the petition and refile it.

4.107(4) Within 60 days of the filing of a petition the employment appeal board shall meet to consider the petition. The employment appeal board shall either grant the petition and commence rule making, or deny the petition and notify the petitioner in writing of the grounds for the denial.

This rule is intended to implement Iowa Code sections 17A.7 and 10A.601 and chapter 88.

486—4.108(10A,88) Special circumstances—waiver of rules. In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the employment appeal board may, upon application by any party or intervenor, or on its own motion, after three days' notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

486—4.109(10A,88) Penalties.

4.109(1) All penalties assessed by the employment appeal board are civil.

4.109(2) The employment appeal board has no jurisdiction under Iowa Code sections 88.14(5), 88.14(6), 88.14(7) and 88.14(8) and will conduct no proceeding thereunder.

486—4.110(10A,88) Telephone hearing.

4.110(1) The employment appeal board or administrative law judge, on its own motion, or on the motion of any party or intervenor, and in the absence of an objection from any party or intervenor, may conduct a hearing by means of a telephone conference call. Hearings shall be recorded as provided in 4.65(1).

4.110(2) Any party or intervenor upon whom a motion for a telephone hearing is served shall have five days from service of the motion to file an objection.

4.110(3) Evidence and exhibits to be introduced during the course of a telephone hearing must be submitted to the employment appeal board with copies to all parties and intervenors before the date of the telephone hearing.

4.110(4) Persons who wish to be present at the telephone hearing but who do not wish to participate may attend and listen to the telephone hearing at the office of the administrative law judge or at the office of any consenting party or intervenor.

This rule is intended to implement Iowa Code chapter 88 and section 10A.601.

[Filed 8/11/88, Notices 2/24/88, 4/6/88—published 9/7/88, effective 10/12/88]

[Filed 2/16/89, Notice 11/16/88—published 3/8/89, effective 4/12/89]

[Filed 12/10/93, Notice 9/29/93—published 1/5/94, effective 2/9/94]

[Filed 6/29/98, Notice 4/8/98—published 7/29/98, effective 9/2/98]

[Filed 4/25/03, Notice 3/19/03—published 5/14/03, effective 6/18/03]

[Editorial change: IAC Supplement 2/21/24]

CHAPTER 5
PERSONNEL APPEALS

486—5.1(10A) Appeals.

5.1(1) *Form and time of appeal.* A person aggrieved by a personnel action pertaining to an application rejection; examination rating; removal from an eligible list or disqualification; or veteran's points rejection may appeal to the employment appeal board within 30 days from the date of the notification of the action. The appeal must be in writing, signed by the appellant or authorized agent. If an appeal is signed by the authorized agent, the name of the appellant shall be shown in the appeal.

The appeal shall be addressed to Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

5.1(2) *Taking the appeal.* An appeal may be filed by mail, by facsimile transmission, by other transmission, or in person. If filed by U.S. Postal Service, the date of filing shall be the date of the postmark, if legible. If by fax, the date of filing shall be the date of the fax transmission. If by other transmission, or in person, the date of filing shall be the date received by the employment appeal board.

The employment appeal board shall provide the respondent agency a copy of the appeal.

5.1(3) *Hearing date and notice.* Upon receipt of the appeal, the appeal board shall determine if the board will conduct the hearing or if it will assign the appeal to an administrative law judge of the appeals section of the department of inspections and appeals. If the board conducts the hearing, a hearing date shall be established and notice of the hearing shall be sent to the parties by ordinary mail not less than ten days prior to the hearing.

If the matter is assigned to an administrative law judge, the matter shall be assigned for hearing by the administrative law judge utilizing procedures established by the appeals section of the department of inspections and appeals.

5.1(4) *Continuances.* Requests for continuance of a hearing must be made not less than three days before the scheduled hearing date. The request must be in writing and signed by the requesting party or an authorized representative. Each party shall be granted only one continuance, unless good cause is established as determined by the chairperson of the appeal board or assigned administrative law judge.

5.1(5) *Hearings.* The hearing may be conducted by a quorum of the employment appeal board. A quorum of the appeal board shall be two members. If the matter is assigned to an administrative law judge, that person shall conduct the hearing.

5.1(6) *Procedure during hearings.* If the appeal is heard by the employment appeal board, the hearing shall be conducted in an informal manner utilizing the procedures provided in Iowa Code section 17A.12.

5.1(7) *Decision.* If the hearing is conducted by the employment appeal board, the decision of the board shall be the final decision. If the hearing is conducted by an administrative law judge, the decision shall be a proposed decision, which shall become the final decision 20 days after the issue date of that decision, unless a further appeal is taken to the employment appeal board. The appeal board on further review may reverse, modify or remand the proposed decision. The decision of the employment appeal board becomes the final decision on further review.

5.1(8) *Rehearings and further appeals.* The decision of the appeal board shall be the final decision of the agency. A request for rehearing must be filed within 20 days of the date of the board's decision. The board has 20 days from the date of filing to act on the request for rehearing or it is deemed denied by law. Any appeal to district court must be made within 30 days from the date of the decision of the employment appeal board or to the denial, or deemed denial, of the request for rehearing.

This rule is intended to implement Iowa Code section 10A.601.

[Editorial change: IAC Supplement 2/21/24]

[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]

[Filed 2/16/89, Notice 11/16/88—published 3/8/89, effective 4/12/89]

[Filed 6/29/98, Notice 4/8/98—published 7/29/98, effective 9/2/98]

[Filed 4/25/03, Notice 3/19/03—published 5/14/03, effective 6/18/03]

[Editorial change: IAC Supplement 2/21/24]

CHAPTER 8
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The employment appeal board adopts, with the following amendments and exceptions, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

486—8.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of the words “(official or body issuing these rules)”, insert “employment appeal board”.

“Custodian.” Delete “the agency” and insert “an agency”. Insert “The originating agency, if any, is the custodian of records which are used to carry out functions of the originating agency.”

“Originating agency” means the government agency which has authority over and custody of records and for whom the board is performing a service.

486—8.3(17A,22) Requests for access to records.

8.3(1) Location of record. In lieu of the words “(insert agency head)” insert “board”. In lieu of the words “(insert agency name and address)” insert “Employment Appeal Board, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321”.

8.3(2) Office hours. In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday”.

8.3(7) Fees.

c. Supervisory fee. In lieu of the words “(specify time period)” insert “fifteen minutes”.
[Editorial change: IAC Supplement 2/21/24]

486—8.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)”, insert “the originating agency, to the board”.

486—8.9(17A,22) Disclosures without the consent of the subject.

8.9(1) Open records are routinely disclosed without the consent of the subject.

8.9(2) To the extent allowed by law, disclosure of confidential records or exempt 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 8.10(22) or in the notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.
- e.* To the legislative services agency under Iowa Code section 2A.3.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

486—8.10(22) Routine use.

8.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It

includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

8.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

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

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

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

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

e. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

486—8.11(22) Consensual disclosure of confidential records.

8.11(1) *Consent to disclosure by a subject individual.* To the extent provided by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 8.7(17A,22).

8.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency to the extent permitted by law may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

486—8.12(22) Availability of records.

8.12(1) *General.* The agency records are open for public inspection and copying unless otherwise provided by rule or law.

8.12(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. Tax records made available to the agency.

b. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

c. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

486—8.13(22) Personally identifiable information. The department maintains systems of records which contain personally identifiable information.

8.13(1) *Rule-making records.* Rule-making records may contain information about people who make written or oral comments about proposed rules. Iowa Code section 17A.4 requires collection and retention of this information. It cannot be retrieved by an individual identifier. It is not stored in a computer system.

During the rule-writing process, committees are occasionally used to gather basic information. Minutes of committee meetings are available for public inspection. The minutes are retained.

8.13(2) *Contested case records.* Contested case records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records.

Records are collected by authority of Iowa Code section 10A.601. None of the information stored in a data processing system is compared with information in any other data processing system.

Records of hearings are recorded on magnetic cassette tapes or in written transcripts.

These rules are intended to implement Iowa Code sections 22.7 and 22.11 and Iowa Code chapters 10A, 19A, 80, 88, 89A, 89B, 96 and 97.

[Filed emergency 8/11/88 after Notice 5/4/88—published 9/7/88, effective 8/11/88]
[Editorial change: IAC Supplement 2/21/24]

RACING AND GAMING COMMISSION[491]

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming

Division [195] under the “umbrella” of Commerce, Department of [181], 11/19/86]

[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]

[Transferred from Commerce Department[181] to the Department of Inspections and Appeals “umbrella”[481]
pursuant to 1987 Iowa Acts, chapter 234, section 421]

[Renamed Racing and Gaming Commission[491], 8/23/89; See 1989 Iowa Acts, ch 67 §1(2), and ch 231 §30(1), 31]

CHAPTER 1

ORGANIZATION AND OPERATION

- 1.1(99D,99E,99F) Function
- 1.2(99D,99F) Organization, meetings, and procedure
- 1.3(99D,99F) Administration of the commission
- 1.4(17A,22,99D,99F) Open records
- 1.5(17A,99D,99F) Forms
- 1.6 Reserved
- 1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates
- 1.8(17A,99D,99F) Granting of a waiver

CHAPTER 2

RULE MAKING AND DECLARATORY ORDERS

- 2.1(17A) Applicability
- 2.2(17A) Advice on possible rules before notice of proposed rule adoption
- 2.3(17A) Public rule-making docket
- 2.4(17A) Notice of proposed rule making
- 2.5(17A) Public participation
- 2.6(17A) Regulatory analysis
- 2.7(17A,25B) Fiscal impact statement
- 2.8(17A) Time and manner of rule adoption
- 2.9(17A) Variance between adopted rule and published notice of proposed rule adoption
- 2.10(17A) Exemption from public rule-making procedures
- 2.11(17A) Concise statement of reasons
- 2.12(17A) Contents, style, and form of rule
- 2.13(17A) Agency rule-making record
- 2.14(17A) Filing of rules
- 2.15(17A) Effectiveness of rules prior to publication
- 2.16(17A) General statements of policy
- 2.17(17A) Review by commission of rules
- 2.18(17A) Petition for rule making
- 2.19(17A) General
- 2.20(17A) Petition for declaratory order
- 2.21(17A) Notice of petition
- 2.22(17A,99D,99F) Intervention
- 2.23(17A) Briefs
- 2.24(17A) Inquiries
- 2.25(17A) Service and filing of petitions and other papers
- 2.26(17A) Consideration
- 2.27(17A) Action on petition
- 2.28(17A) Refusal to issue order
- 2.29(17A) Contents of declaratory order—effective date
- 2.30(17A) Copies of orders
- 2.31(17A) Effect of a declaratory order

CHAPTER 3
FAIR INFORMATION PRACTICES
(Uniform Rules)

- 3.1(17A,22) Definitions
- 3.3(17A,22) Requests for access to records
- 3.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records
- 3.9(17A,22) Disclosures without the consent of the subject
- 3.10(17A,22) Routine use
- 3.11(17A,22) Consensual disclosure of confidential records
- 3.12(17A,22) Release to subject
- 3.13(17A,22) Availability of records
- 3.14(17A,22) Personally identifiable information

CHAPTER 4
CONTESTED CASES AND OTHER PROCEEDINGS

- 4.1(17A) Scope and applicability
- 4.2(17A) Definitions
- 4.3(17A) Time requirements

DIVISION I
GAMING REPRESENTATIVE, GAMING BOARD,
AND BOARD OF STEWARDS

- 4.4(99D,99E,99F) Gaming representatives and administrator's designees—licensing and regulatory duties
- 4.5(99D,99E,99F) Gaming board—duties
- 4.6(99D,99F) Stewards—licensing and regulatory duties
- 4.7(99D,99E,99F) Penalties (gaming board and board of stewards)
- 4.8(99D,99E,99F) Effect of another jurisdiction's order
- 4.9(99D,99E,99F) Service of administrative actions
- 4.10(99D,99E,99F) Appeals of administrative actions
- 4.11 to 4.19 Reserved

DIVISION II
CONTESTED CASES

- 4.20(17A) Requests for contested case proceedings not covered in Division I
- 4.21(17A) Notice of hearing
- 4.22(17A) Presiding officer
- 4.23(17A) Waiver of procedures
- 4.24(17A) Telephone proceedings
- 4.25(17A) Disqualification
- 4.26(17A) Consolidation—severance
- 4.27(17A) Pleadings
- 4.28(17A) Service and filing of pleadings and other papers
- 4.29(17A) Discovery
- 4.30(17A) Subpoenas
- 4.31(17A) Motions
- 4.32(17A) Prehearing conference
- 4.33(17A) Continuances
- 4.34(17A) Withdrawals
- 4.35(17A) Intervention
- 4.36(17A) Hearing procedures
- 4.37(17A) Evidence
- 4.38(17A) Default
- 4.39(17A) Ex parte communication

4.40(17A)	Recording costs
4.41(17A)	Interlocutory appeals
4.42(17A)	Final decision
4.43(17A)	Appeals and review
4.44(17A)	Applications for rehearing
4.45(17A)	Stays of commission actions
4.46(17A)	No factual dispute contested cases
4.47(17A)	Emergency adjudicative proceedings
4.48(17A)	Contested case hearings before the commission

CHAPTER 5

TRACK, GAMBLING STRUCTURE, AND EXCURSION GAMBLING BOAT LICENSEES' RESPONSIBILITIES

5.1(99D,99F)	In general
5.2(99D,99F)	Annual reports
5.3(99D,99F)	Information
5.4(99D,99F)	Uniform requirements
5.5(99D)	Pari-mutuel uniform requirements
5.6(99F)	Excursion gambling boat uniform requirements

CHAPTER 6

OCCUPATIONAL AND VENDOR LICENSING

6.1(99D,99E,99F)	Definitions
6.2(99D,99E,99F,252J)	Occupational licensing
6.3(99D,99E,99F)	Waiver of privilege
6.4(99D,99E,99F)	License acceptance
6.5(99D,99E,99F)	Grounds for denial, suspension, or revocation of a license or issuance of a fine
6.6(99D,99E,99F)	Applications for license after denial, revocation, or suspension
6.7(99D,99E,99F)	Probationary period placed on a license
6.8(99D,99E,99F)	Duration of license
6.9(99D,99E,99F)	Licensed employees moving from one location to another
6.10(99D,99E,99F)	Required report of discharge of licensed employee
6.11(99D,99F,252J)	Receipt of certificate of noncompliance from the child support recovery unit
6.12	Reserved
6.13(99D,99F,272D)	Receipt of certificate of noncompliance from the centralized collection unit of the department of revenue
6.14(99D,99F)	Vendor's license
6.15(99D,99F)	Applicability of rules—exceptions
6.16(99D)	Disclosure of ownership of racing animals
6.17(99D)	Owners of racing animals
6.18(99D)	Kennel/stable name
6.19(99D)	Leases (horse racing only)
6.20(99D)	Partnerships owning racing animals
6.21(99D)	Corporations owning racing animals
6.22(99D)	Authorized agents for owner entities of racing animals
6.23(99D)	Trainers and assistant trainers of racing animals
6.24(99D)	Jockeys and apprentice jockeys
6.25(99D)	Jockey agent
6.26(99D)	Driver
6.27(99D)	Practicing veterinarians
6.28(99D,99F)	Alcohol and drug testing
6.29(99D)	Time by which owner, jockey and trainer must be licensed

CHAPTER 7
GREYHOUND RACING

7.1(99D)	Terms defined
7.2(99D)	Facility's responsibilities
7.3(99D)	Racing officials—duties
7.4(99D)	Lead-outs
7.5(99D)	Trainers and assistant trainers
7.6(99D)	Registration
7.7(99D)	Entries
7.8(99D)	Withdrawals and scratches
7.9(99D)	Weights and weighing
7.10(99D)	Qualifying time
7.11(99D)	Schooling
7.12(99D)	Running of the race
7.13(99D)	Race reckless/interfered/ruled off
7.14(99D)	Medication and administration, sample collection, chemists, and practicing veterinarians
7.15(99D)	Iowa greyhound pari-mutuel racing fund

CHAPTER 8
PARI-MUTUEL WAGERING, SIMULCASTING AND ADVANCE DEPOSIT WAGERING

8.1(99D)	Definitions
8.2(99D)	General
8.3(99D)	Approval of pari-mutuel wagers
8.4(99D)	Simulcast wagering
8.5(99D)	Interstate common-pool wagering
8.6(99D)	Advance deposit wagering
8.7(99D)	Alternative simulcast operator

CHAPTER 9
Reserved

CHAPTER 10
THOROUGHBRED AND QUARTER HORSE RACING

10.1(99D)	Terms defined
10.2(99D)	Facilities' responsibilities
10.3(99D)	Facility policies
10.4(99D)	Racing officials
10.5(99D)	Trainer, jockey, and jockey agent responsibilities
10.6(99D)	Conduct of races
10.7(99D)	Medication and administration, sample collection, chemists, and practicing veterinarian

CHAPTER 11
GAMBLING GAMES

11.1(99F)	Definitions
11.2(99F)	Conduct of all gambling games
11.3(99F)	Gambling games approved by the commission
11.4(99F)	Approval for distribution, operation, or movement of gambling games and implements of gambling
11.5(99F)	Gambling games authorized
11.6(99F)	Gambling game-based tournaments
11.7(99F)	Table game requirements

11.8(99F)	Keno
11.9(99F)	Slot machine requirements
11.10(99F)	Slot machine hardware and software specifications
11.11	Reserved
11.12(99F)	Progressive slot machines
11.13(99F)	Licensing of manufacturers and distributors of gambling games or implements of gambling

CHAPTER 12

ACCOUNTING AND CASH CONTROL

12.1(99F)	Definitions
12.2(99F)	Accounting records
12.3(99F)	Facility internal controls
12.4(99F)	Accounting controls within the cashier's cage
12.5(99F)	Gaming table container
12.6(99F)	Accepting currency at gaming tables
12.7(99F)	Procedures for the movement of gaming chips to and from gaming tables
12.8(99F)	Dropping or opening a gaming table
12.9(99F)	Slot machine container and key
12.10(99F)	Procedures for hopper fills and attendant payouts
12.11(99F)	Attendant and ticket payout accounting
12.12(99F)	Computer recording requirements and monitoring of slot machines
12.13(99F)	Transportation of containers
12.14(99F)	Count room—characteristics
12.15(99F)	Opening, counting, and recording contents of containers in the count room
12.16(99F)	Electronic wagering accounts

CHAPTER 13

SPORTS WAGERING

13.1(99F)	Definitions
13.2(99F)	Conduct of all sports wagering
13.3(99F)	Approval of sports wagers
13.4(99F)	Designated sports wagering area
13.5(99F)	Advance deposit sports wagering
13.6(99F)	Testing
13.7(99F)	Licensing

CHAPTER 14

FANTASY SPORTS CONTESTS

14.1(99E)	Definitions
14.2(99E)	Application for fantasy sports contest service provider license and licensing
14.3(99E)	Temporary license certificates
14.4(99E)	Withdrawal of application
14.5(99E)	Fees
14.6(99E)	Taxes
14.7(99E)	Account registration
14.8(99E)	Fantasy sports contest service provider requirements
14.9(99E)	Contest rules
14.10(99E)	Segregation account requirements and financial reserves
14.11(99E)	Annual audit
14.12(99E)	Abandoned accounts
14.13(99E)	Problem gambling
14.14(99E)	Licensing of internet fantasy sports contest service providers

CHAPTER 4
CONTESTED CASES AND OTHER PROCEEDINGS

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the racing and gaming commission. The chapter shall also apply to gaming boards' and board of stewards' proceedings and gaming representatives' or administrator's designees' actions.
[ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—4.2(17A) Definitions. Except where otherwise specifically defined by law:

"Board of stewards" means a board established by the administrator to review conduct by occupational and pari-mutuel licensees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

"Commission" means the racing and gaming commission.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Gaming board" means a board established by the administrator to review conduct by occupational, excursion gambling boat, gambling structure, sports wagering, fantasy sports contest and gambling game licensees that may constitute violations of the rules and statutes relating to gaming. The administrator may serve as a board of one.

"Gaming representative" means an employee of the commission assigned by the administrator to a licensed pari-mutuel racetrack, excursion gambling boat, or gambling structure to perform the supervisory and regulatory duties of the commission.

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

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

"Presiding officer" means the administrative law judge presiding over a contested case hearing or the commission in cases heard by the commission.

"Proposed decision" means the administrative law judge's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commission did not preside.

"Steward" means a racing official appointed or approved by the commission to perform the supervisory and regulatory duties relating to pari-mutuel racing.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

491—4.3(17A) Time requirements.

4.3(1) In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

4.3(2) All documents or papers required to be filed with the commission shall be delivered to any commission office within such time limits as prescribed by law or by rules or orders of the commission. No papers shall be considered filed until actually received by the commission.

4.3(3) 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.

AND BOARD OF STEWARDS

491—4.4(99D,99E,99F) Gaming representatives and administrator's designees—licensing and regulatory duties.

4.4(1) The gaming representative shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying a license for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Rescinded IAB 2/5/03, effective 3/12/03.

c. Rescinded IAB 9/29/04, effective 11/3/04.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.4(2) The gaming representative or the administrator's designee shall monitor, supervise, and regulate the activities of occupational, pari-mutuel racetrack, sports wagering, fantasy sports contest, gambling game, excursion gambling boat, and gambling structure licensees. A gaming representative or the administrator's designee may investigate any questionable conduct by a licensee for any violation of the rules or statutes. A gaming representative or the administrator's designee may refer an investigation to the gaming board upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

a. A referral to the gaming board shall be in writing. The referral shall make reference to rules or statutory provisions at issue and provide a factual basis supporting the violation.

b. The gaming representative or the administrator's designee making the referral to the gaming board, or a designee of the gaming board, shall appear before the gaming board at the hearing to provide any information requested by the board.

4.4(3) A gaming representative or the administrator's designee shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the gaming representative or the administrator's designee determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D, 99E or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the gaming representative shall take one of the following courses of action:

a. If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the gaming representative shall reinstate the license.

b. If the licensee is convicted of the charges, the gaming representative shall deny the license.

c. If the licensee is convicted of a lesser charge, it is at the discretion of the gaming representative whether to reinstate or deny the license pursuant to 491—Chapter 6.

4.4(4) The gaming representative shall revoke the license of a person reported to the commission as having refused drug testing or as having a confirmed positive drug test result for a controlled substance, for a drug test conducted pursuant to Iowa Code section 730.5 or 99F.4(20).

4.4(5) A gaming representative may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The gaming representative may provide notice of ejection or exclusion orally or in writing. The gaming representative may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The gaming representative may exclude the person for a certain or an indefinite period of time.

4.4(6) The gaming representative may forbid any person from continuing to engage in an activity the representative feels is detrimental to racing or gaming until resolved.

4.4(7) The gaming representative or the administrator's designee shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

4.4(8) A gaming representative may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—4.5(99D,99E,99F) Gaming board—duties. The gaming board conducts informal hearings whenever the board has reasonable cause to believe that a licensee, an occupational licensee, or other persons have committed an act or engaged in conduct which is in violation of statute or commission rules. The hearings precede a contested case hearing and are investigative in nature. The following procedures will apply:

4.5(1) The gaming board shall consist of three gaming representatives, as assigned by the administrator. The administrator has the discretion to create more than one gaming board, to set terms for gaming board members, to assign alternates, and to make any decisions necessary for the efficient and effective operation of the gaming board. A gaming representative who has made a referral to the gaming board shall not sit on the board that makes a decision on the referral.

4.5(2) The administrator may designate an employee to act as gaming board coordinator. The gaming board coordinator shall have the power to assist and advise the gaming board through all aspects of the gaming board hearing process. The gaming board coordinator may review any referral from gaming representatives prior to setting the matter for hearing before the gaming board. The gaming board coordinator, in consultation with the administrator or the administrator's designee, may return the referral to the initiating gaming representative if the information provided appears insufficient to establish a violation. The gaming board coordinator shall otherwise assist the gaming board in setting the matter for hearing.

4.5(3) The gaming board, upon receipt of a referral, may review the referral prior to the hearing. The gaming board may return a referral to the initiating gaming representative or the administrator's designee on its own motion prior to hearing if the information provided appears insufficient to establish a violation.

4.5(4) Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder, at which all board members or their appointed representatives shall be present in person or by teleconference. The license holder may request a continuance for good cause in writing not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

4.5(5) The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

4.5(6) The gaming board has complete and total authority to decide all issues concerning the process of the hearing. The gaming board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The gaming board has the right to request witnesses or additional documents that have not been submitted by the initiating gaming representative. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the gaming board.

4.5(7) It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

4.5(8) Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a licensed facility is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

4.5(9) The gaming board has the power to interpret the rules and to decide all questions not specifically covered by them. The board has the power to determine all questions arising with reference to the conduct of gaming and sports wagering and fantasy sports contests and the authority to decide any question or dispute relating to racing, gaming, sports wagering or fantasy sports contests in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

4.5(10) The gaming board shall enter a written decision after each hearing. The decision shall find whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The gaming board has the authority to impose any penalty as set forth in these rules.

4.5(11) Rescinded IAB 9/29/04, effective 11/3/04.

4.5(12) Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.5(13) Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with a gaming representative or the administrator's designee. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the gaming board. Stipulations are considered final agency action and cannot be appealed.

[ARC 2927C, IAB 2/1/17, effective 3/8/17; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—4.6(99D,99F) Stewards—licensing and regulatory duties.

4.6(1) The stewards shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying an application for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Rescinded IAB 2/5/03, effective 3/12/03.

c. An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.6(2) The stewards shall monitor, supervise, and regulate the activities of occupational and pari-mutuel racetrack licensees. A steward may investigate any questionable conduct by a licensee for any violation of the rules or statutes. Any steward may refer an investigation to the board of stewards upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

4.6(3) A steward shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the steward determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the stewards shall take one of the following courses of action:

a. If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the stewards shall reinstate the license.

b. If the licensee is convicted of the charges, the stewards shall deny the license.

c. If the licensee is convicted of a lesser charge, it is at the discretion of the stewards whether to reinstate or deny the license pursuant to 491—Chapter 6.

4.6(4) The stewards may summarily suspend an occupational license in accordance with rule 491—4.47(17A).

4.6(5) Hearings before the board of stewards intended to implement Iowa Code section 99D.7(13) shall be conducted under the following parameters:

a. Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder. The license holder may request a continuance in writing for good cause not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

b. The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

c. The board has complete and total authority to decide the process of the hearing. The administrator may designate an employee to assist and advise the board of stewards through all aspects of the hearing process. The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

d. It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

e. Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

f. The board of stewards has the power to interpret the rules and to decide all questions not specifically covered by them. The board of stewards has the power to determine all questions arising with reference to the conduct of racing, and the authority to decide any question or dispute relating to racing in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

g. The board of stewards shall enter a written decision after each hearing. The decision shall state whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The board of stewards has the authority to impose any penalty, as set forth in these rules.

h. Rescinded IAB 9/29/04, effective 11/3/04.

i. Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.6(6) A steward may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The steward may provide notice of ejection or exclusion orally or in writing. The steward may define the

scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The steward may exclude the person for a certain or indefinite period of time.

4.6(7) The stewards shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

4.6(8) Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with the stewards. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the board of stewards. Stipulations are considered final agency action and cannot be appealed.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—4.7(99D,99E,99F) Penalties (gaming board and board of stewards). All penalties imposed will be promptly reported to the commission and facility or other licensed entity in writing. The board may impose one or more of the following penalties: eject and exclude an individual from a facility; revoke a license; suspend a license for up to five years from the date of the original suspension; place a license on probation; deny a license; impose a fine; or order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board of stewards may impose a fine of up to \$1,000, and the gaming board may impose a fine of up to \$3,000. The board may set the dates for which the suspension must be served. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by a state racing or gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission.

4.7(1) Fines shall be paid within ten calendar days of receipt of the ruling, by the end of business hours, at any commission office. Nonpayment or late payment of a fine may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

4.7(2) If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

4.7(3) If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

4.7(4) Refunds due under subrule 4.7(3) will be mailed to the party's current address on record.

4.7(5) When a racing animal or the holder of an occupational license is suspended by the board at one location, the suspension shall immediately become effective at all other facilities under the jurisdiction of the commission.

[ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 1456C, IAB 5/14/14, effective 6/18/14; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

491—4.8(99D,99E,99F) Effect of another jurisdiction's order. The commission or board may take appropriate action against a license holder or other person who has been excluded from a track or gaming establishment in another jurisdiction to exclude that person from any track or gaming establishment under the commission's jurisdiction. Proceedings shall be conducted in the same manner as prescribed by these rules for determining misconduct on Iowa tracks or in gaming establishments and shall be subject to the same appeal procedures.

The commission and stewards shall have discretion to honor rulings from other jurisdictions regarding license suspension or revocation or the eligibility of contestants. Whenever the commission decides to honor an order from another jurisdiction, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended or revoked.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—4.9(99D,99E,99F) Service of administrative actions. Any administrative action taken against an applicant or occupational licensee shall be served on the applicant or occupational licensee by personal service or by certified mail with return receipt requested to the last-known address on the application.

4.9(1) If the applicant or licensee is represented by legal counsel, a copy of the written decision shall also be provided to legal counsel by regular mail. However, the applicant or licensee must still be served in accordance with this rule.

4.9(2) If the administrative action involves an alleged medication violation that could result in disqualification of a contestant, the stewards shall provide by regular mail notice of the hearing and all subsequent rulings to the owner of the contestant.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—4.10(99D,99E,99F) Appeals of administrative actions. A license applicant or an occupational licensee may appeal a denial, suspension or ruling. An appeal must be made in writing to the office of the gaming representative or the commission office in Des Moines. An appeal may also be filed by facsimile, electronic mail, or any other method as determined by the administrator. The appeal must be received within 72 hours of service of the decision and is not considered filed until received by the commission. For any appeal of a decision rendered pursuant to 491—paragraph 10.4(4)“d”(3)“1,” the appeal must be received within 72 hours of any such decision and the standard of review will be abuse of discretion. The appeal must contain numbered paragraphs and set forth the name of the person seeking review; the decision to be reviewed; separate assignments of error; clear and concise statement of relevant facts; reference to applicable statutes, rules or other authority; prayer setting forth relief sought; and signature, name, address, and telephone number of the person seeking review or that person’s representative; or shall be on a form prescribed by the commission. If a licensee is granted a stay of a suspension pursuant to 491—4.45(17A) and the ruling is upheld in a contested case proceeding, the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; see Delay note at end of chapter; ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—4.11 to 4.19 Reserved.

DIVISION II CONTESTED CASES

491—4.20(17A) Requests for contested case proceedings not covered in Division I. Any person or entity claiming an entitlement to a contested case proceeding, which is not otherwise covered by the procedures set forth in Division I, shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the commission action in question.

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

491—4.21(17A) Notice of hearing.

4.21(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.21(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

- e.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties' counsel where known;
 - f.* Reference to the procedural rules governing conduct of the contested case proceeding;
 - g.* Reference to the procedural rules governing informal settlement;
 - h.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections, appeals, and licensing); and
 - i.* Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) "a" and rule 491—4.22(17A), that the presiding officer be an administrative law judge.
- [Editorial change: IAC Supplement 11/1/23]

491—4.22(17A) Presiding officer. Contested case hearings may be heard directly by the commission. The commission, or the administrator, shall decide whether it will hear the appeal or whether the appeal will be heard by an administrative law judge who shall serve as the presiding officer. When the appeal is heard by an administrative law judge, the administrative law judge is authorized to issue a proposed decision.

4.22(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the commission chair, members of the commission or commission employees.

4.22(2) The administrator may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the administrator nor any officer of the commission under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- f.* The request was not timely filed.
- g.* The request is not consistent with a specified statute.

4.22(3) The administrator shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

4.22(4) An administrative law judge assigned to act as presiding officer in a contested case shall have a Juris Doctor degree unless waived by the agency.

4.22(5) Except as provided otherwise by rules 491—4.41(17A) and 491—4.42(17A), all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commission. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.22(6) Unless otherwise provided by law, the commission, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 6895C, IAB 2/22/23, effective 3/29/23; Editorial change: IAC Supplement 11/1/23]

491—4.23(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

491—4.24(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine

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

491—4.25(17A) Disqualification.

4.25(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.

4.25(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 commission 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 and subrules 4.25(3) and 4.39(9).

4.25(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.

4.25(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.25(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. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 491—4.41(17A) and seek a stay under rule 491—4.45(17A).

491—4.26(17A) Consolidation—severance.

4.26(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.

4.26(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

491—4.27(17A) Pleadings.

4.27(1) Pleadings, other than the notice of appeal, will not be required in appeals from a licensing decision by a gaming representative, gaming board, or board of stewards. However, pleadings may be required in other contested cases or as ordered by the presiding officer.

4.27(2) Petition.

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

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.27(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

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

4.27(4) Amendment. Any notice of appeal, notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

491—4.28(17A) Service and filing of pleadings and other papers.

4.28(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.28(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.28(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the commission at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

4.28(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commission office at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309, 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.

4.28(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

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

(Date) (Signature)

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

491—4.29(17A) Discovery.

4.29(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.29(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.29(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.29(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

491—4.30(17A) Subpoenas.

4.30(1) Issuance.

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

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

4.30(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

491—4.31(17A) Motions.

4.31(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.

4.31(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 commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.31(3) The presiding officer may schedule oral argument on any motion.

4.31(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 commission or an order of the presiding officer.

4.31(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 491—4.44(17A) and appeal pursuant to rule 491—4.43(17A).

491—4.32(17A) Prehearing conference.

4.32(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 commission to all parties. For good cause the presiding officer may permit variances from this rule.

4.32(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.

4.32(3) In addition to the requirements of subrule 4.32(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.

4.32(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.

491—4.33(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.33(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 commission may waive notice of such requests for a particular case or an entire class of cases.

4.33(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.

491—4.34(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

491—4.35(17A) Intervention.

4.35(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.35(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.35(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.35(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

491—4.36(17A) Hearing procedures.

4.36(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.36(2) All objections shall be timely made and stated on the record.

4.36(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.36(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.

4.36(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.36(6) Witnesses may be sequestered during the hearing.

4.36(7) The presiding officer shall conduct the hearing in the following manner:

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

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

- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

491—4.37(17A) Evidence.

4.37(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.

4.37(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.37(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.37(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.

4.37(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.

4.37(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.

491—4.38(17A) Default.

4.38(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.38(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.38(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 491—4.43(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

4.38(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.38(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have

ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.38(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

4.38(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 491—4.41(17A).

4.38(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

4.38(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

4.38(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 491—4.45(17A).

491—4.39(17A) Ex parte communication.

4.39(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the commission or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.25(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.39(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.

4.39(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.39(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 communication shall be provided in compliance with rule 491—4.28(17A) and may be supplemented by telephone, facsimile, email or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.39(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.

4.39(6) The administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 4.25(1) or other law and they comply with subrule 4.39(1).

4.39(7) Communications with the presiding officer involving scheduling or procedural matters uncontested do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 491—4.33(17A).

4.39(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.39(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.39(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension, or revocation of the privilege to practice before the commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

491—4.40(17A) Recording costs. Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

491—4.41(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

491—4.42(17A) Final decision.

4.42(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

4.42(2) When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within the time provided in rule 491—4.43(17A).

4.42(3) The commission has the authority to deny, suspend, or revoke any license applied for or issued by the commission or to fine a licensee or a holder of an occupational license.

491—4.43(17A) Appeals and review.

4.43(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 10 days after issuance of the proposed decision.

4.43(2) Review. The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

4.43(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

4.43(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.43(5) Scheduling. The commission shall issue a schedule for consideration of the appeal.

4.43(6) Briefs and arguments. Unless otherwise ordered, briefs, if any, must be filed within five days of meeting.

491—4.44(17A) Applications for rehearing.

4.44(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

4.44(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.43(4), the applicant requests an opportunity to submit additional evidence.

4.44(3) Time of filing. The application shall be filed with the commission within 20 days after issuance of the final decision.

4.44(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

4.44(5) Disposition. Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

491—4.45(17A) Stays of commission actions.

4.45(1) When available.

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

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

4.45(2) When granted. In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in Iowa Code section 17A.19(5).

4.45(3) Vacation. A stay may be vacated by the issuing authority upon application by the commission or any other party. When a stay has been vacated, the commission or the commission's designee shall implement the original order or sanction which had been stayed. The commission or the

commission's designee shall have full authority to determine how the original order or sanction is to be implemented.

491—4.46(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

491—4.47(17A) Emergency adjudicative proceedings.

4.47(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the commission, gaming representatives, or stewards may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before the issuing of an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the commission is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the commission is necessary to avoid the immediate danger.

4.47(2) Issuance.

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

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the commission;
- (3) Certified mail to the last address on file with the commission;
- (4) First-class mail to the last address on file with the commission; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

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

4.47(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.47(4) Completion of proceedings. Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

491—4.48(17A) Contested case hearings before the commission. The commission may initiate a hearing upon its own motion, pursuant to any matter within its jurisdiction.

These rules are intended to implement Iowa Code chapters 17A, 99D and 99F.

- [Filed 4/5/85, Notice 2/27/85—published 4/24/85, effective 5/29/85]
- [Filed emergency 10/20/86—published 11/19/86, effective 10/20/86]
- [Filed 6/19/87, Notice 5/6/87—published 7/15/87, effective 8/20/87]
- [Filed 10/23/87, Notice 9/9/87—published 11/18/87, effective 12/23/87]
- [Filed 11/4/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
- [Filed 2/17/89, Notice 1/11/89—published 3/8/89, effective 4/12/89]
- [Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
- [Filed 2/15/91, Notice 1/12/91—published 3/6/91, effective 4/10/91]
- [Filed 12/6/91, Notice 10/16/91—published 12/25/91, effective 1/29/92]
- [Filed emergency 12/12/91—published 1/8/92, effective 12/12/91]
- [Filed 2/12/92, Notice 1/8/92—published 3/4/92, effective 4/8/92]
- [Filed 10/30/92, Notice 9/16/92—published 11/25/92, effective 1/6/93]
- [Filed 12/18/92, Notice 10/14/92—published 1/6/93, effective 2/10/93]
- [Filed emergency 2/5/93—published 3/3/93, effective 2/5/93]
- [Filed emergency 3/22/93—published 4/14/93, effective 3/22/93]^o
- [Filed emergency 4/19/93—published 5/12/93, effective 4/19/93]
- [Filed 4/19/93, Notice 3/3/93—published 5/12/93, effective 6/16/93]
- [Filed 5/21/93, Notice 4/14/93—published 6/9/93, effective 7/14/93]
- [Filed 7/23/93, Notice 5/12/93—published 8/18/93, effective 9/22/93]
- [Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
- [Filed 11/17/95, Notice 9/13/95—published 12/6/95, effective 1/10/96]
- [Filed 1/23/96, Notice 12/6/95—published 2/14/96, effective 3/20/96]
- [Filed 1/17/97, Notice 11/6/96—published 2/12/97, effective 3/19/97]
- [Filed 4/10/97, Notice 2/12/97—published 5/7/97, effective 6/11/97]
- [Filed 9/19/97, Notice 8/13/97—published 10/8/97, effective 11/12/97]
- [Filed 3/6/98, Notice 12/17/97—published 3/25/98, effective 4/29/98]
- [Filed 11/23/98, Notice 10/7/98—published 12/16/98, effective 1/20/99]
- [Filed 4/16/99, Notice 2/10/99—published 5/5/99, effective 6/9/99]
- [Filed 6/18/99, Notice 5/5/99—published 7/14/99, effective 8/18/99]
- [Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]
- [Filed 8/18/00, Notice 7/12/00—published 9/6/00, effective 10/11/00]
- [Filed 4/24/01, Notice 2/7/01—published 5/16/01, effective 6/20/01]
- [Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]
- [Filed 5/17/02, Notice 4/3/02—published 6/12/02, effective 7/17/02]
- [Filed 7/18/02, Notice 6/12/02—published 8/7/02, effective 9/11/02]
- [Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]
- [Filed 6/6/03, Notice 4/2/03—published 6/25/03, effective 7/30/03]
- [Filed 4/21/04, Notice 2/4/04—published 5/12/04, effective 6/16/04]
- [Filed 9/7/04, Notice 7/7/04—published 9/29/04, effective 11/3/04]
- [Filed 10/17/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]
- [Filed 4/21/06, Notice 2/15/06—published 5/10/06, effective 6/14/06]
- [Filed 4/20/07, Notice 2/14/07—published 5/9/07, effective 6/13/07]
- [Filed 1/11/08, Notice 11/7/07—published 1/30/08, effective 3/5/08]
- [Filed ARC 8029B (Notice ARC 7758B, IAB 5/6/09), IAB 8/12/09, effective 9/16/09]
- [Filed ARC 9987B (Notice ARC 9808B, IAB 10/19/11), IAB 2/8/12, effective 3/14/12]
- [Filed ARC 0734C (Notice ARC 0604C, IAB 2/20/13), IAB 5/15/13, effective 6/19/13]
- [Filed ARC 1456C (Notice ARC 1310C, IAB 2/5/14), IAB 5/14/14, effective 6/18/14]
- [Filed ARC 2927C (Notice ARC 2801C, IAB 11/9/16), IAB 2/1/17, effective 3/8/17]
- [Filed Emergency ARC 4618C, IAB 8/28/19, effective 7/31/19]
- [Filed ARC 5016C (Amended Notice ARC 4807C, IAB 12/18/19; Notice ARC 4617C, IAB 8/28/19), IAB 4/8/20, effective 5/13/20]
- [Filed ARC 6895C (Notice ARC 6610C, IAB 11/2/22), IAB 2/22/23, effective 3/29/23]

[Editorial change: IAC Supplement 11/1/23]

[Filed ARC 7634C (Notice ARC 7070C, IAB 9/20/23), IAB 2/21/24, effective 3/27/24]

◇ Two or more ARCs

¹ June 19, 2013, effective date of 4.10 [Item 10 of ARC 0734C] delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held June 11, 2013.

CHAPTER 13
SPORTS WAGERING

491—13.1(99F) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

“Administrator” means the administrator of the racing and gaming commission or the administrator’s designee.

“Advance deposit sports wagering” means a method of sports wagering in which an eligible individual may, in an account established with a licensee under Iowa Code section 99F.7A, deposit moneys into the account and use the account balance to pay for sports wagering. Prior to January 1, 2021, an account must be established by an eligible individual in person with a licensee.

“Advance deposit sports wagering operator” means an advance deposit sports wagering operator licensed by the commission who has entered into an agreement with a licensee under Iowa Code section 99F.7A to provide advance deposit sports wagering.

“Authorized sporting event” means a professional sporting event, collegiate sporting event, international sporting event, or professional motor race event. “Authorized sporting event” does not include a race as defined in Iowa Code section 99D.2, a fantasy sports contest as defined in Iowa Code section 99E.1, minor league sporting event, or any athletic event or competition of an interscholastic sport as defined in Iowa Code section 9A.102.

“Collegiate sporting event” means an athletic event or competition of an intercollegiate sport as defined in Iowa Code section 9A.102.

“Commission” means the racing and gaming commission created under Iowa Code section 99D.5.

“Designated sports wagering area” means an area, as designated by a licensee and approved by the commission, in which sports wagering is conducted.

“Eligible individual” means an individual who is at least 21 years of age or older who is located within this state.

“Facility” means an entity licensed by the commission to conduct pari-mutuel wagering, gaming or sports wagering operations in Iowa.

“International sporting event” means an international team or individual sporting event governed by an international sports federation or sports governing body, including but not limited to sporting events governed by the international olympic committee and the international federation of association football.

“Licensee” means any person licensed under Iowa Code section 99F.7 or 99F.7A.

“Minor league sporting event” means a sporting event conducted by a sports league which is not regarded as the premier league in the sport as determined by the commission.

“Professional sporting event” means an event, excluding a minor league sporting event, at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.

“Sports wagering” means the acceptance of wagers on an authorized sporting event by any system of wagering as authorized by the commission. “Sports wagering” does not include placing a wager on the performance or nonperformance of any individual athlete participating in a single game or match of a collegiate sporting event in which a collegiate team from this state is a participant, or placing a wager on the performance of athletes in an individual international sporting event governed by the international olympic committee in which any participant in the international sporting event is under 18 years of age.

“Sports wagering net receipts” means the gross receipts less winnings paid to wagerers on sports wagering.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—13.2(99F) Conduct of all sports wagering.

13.2(1) Commission policy. It is the policy of the commission to require that all industry participants conduct sports wagering in a manner suitable to protect the public health, safety, morals, good order, and general welfare of the state. Responsibility for selecting, implementing, and maintaining suitable methods of operation rests with the facility, vendor, and advance deposit sports wagering operator.

Willful or persistent use or toleration of methods of operation deemed unsuitable in the sole discretion of the commission will constitute grounds for disciplinary action, up to and including revocation.

13.2(2) *Activities prohibited.* A facility, vendor, or advance deposit sports wagering operator is expressly prohibited from the following activities:

a. Failing to conduct advertising and public relations activities in accordance with decency, dignity, good taste, and honesty.

b. Failing to comply with or make provision for compliance with all federal, state, and local laws and rules pertaining to the operation of a facility or advance deposit sports wagering operation including, but not limited to, payment of license fees, withholding payroll taxes, and violations of alcoholic beverage laws or regulations.

c. Permitting cheating, failing to discover cheating that should have been discovered with reasonable inquiry, or failing to take action to prevent cheating.

d. Failing to conduct sports wagering operations in accordance with proper standards of custom, decorum, and decency; or permitting any type of conduct that reflects negatively on the state or commission or acts as a detriment to the sports wagering industry.

e. Performing any type of sports wagering activity, at any time, that is contrary to the representation made to the commission, commission representatives, or the public.

f. Denying a commissioner or commission representative, upon proper and lawful demand, information, documents, or access to inspect any portion of the sports wagering operation.

13.2(3) *Wagers.* Wagers may only be made by persons 21 years of age or older and on activities authorized pursuant to Iowa Code chapter 99F which are approved by the commission.

13.2(4) *Public notice.*

a. The public shall have access to the sports wagering rules, available wagers, odds or payouts, the payout period, and the source of the information used to determine the outcome of a sports wager. All licensees and advance deposit sports wagering operators shall require participants to follow the rules of play. The sports wagering rules shall be:

(1) Displayed in the licensee's sports wagering area.

(2) Posted on the Internet site or mobile application used to conduct advance deposit sports wagering.

(3) Included in any terms and conditions disclosure statements of the advance deposit sports wagering system.

b. During account setup and login, advance deposit sports wagering operators shall display the following information on any interface that accepts wagers:

(1) Account sharing is prohibited.

(2) Persons under the age of 21 are prohibited from wagering.

(3) Any other disclosures, as required by the administrator.

13.2(5) *Bond.* A licensee shall post a bond or irrevocable letter of credit, at an amount determined by the commission, to the state of Iowa to guarantee that the licensee and any vendor or advance deposit sports wagering operator licensed in conjunction with the licensee faithfully makes the payments, keeps its books and records and makes reports, and conducts its gambling games and sports wagering in conformity with Iowa Code chapter 99F and the rules adopted by the commission.

13.2(6) *Reserve.* A reserve in the form of cash or cash equivalents segregated from operational funds, an irrevocable letter of credit, payment processor reserves and receivables, a bond, or a combination thereof shall be maintained in the amount necessary to cover the outstanding vendor sports wagering liability and advance deposit sports wagering liability. An accounting of this reserve shall be made available for inspection to the commission upon request.

a. The method of reserve shall be submitted to and approved by the administrator prior to implementation.

b. Reserve calculation shall include the following: patron accounts, future wagers liability, unpaid wagers and pending withdrawals.

c. If, at any time, the licensee's total reserve is less than the amount required by the reserve calculation, the licensee shall notify the commission of this deficiency within 72 hours.

d. On a form provided by the commission, the controller or an employee of higher authority shall file a monthly attestation to the commission that the reserve funds have been safeguarded pursuant to this subrule. The attestation shall be provided to the commission no later than 15 days after the end of each month.

13.2(7) Internal controls. Licensees and advance deposit sports wagering operators shall submit a description of internal controls to the administrator. The submission shall be made at least 30 days before sports operations are to commence unless otherwise approved by the administrator. All internal controls must be approved by the administrator prior to commencement of sports operations. The operator shall submit to the administrator any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by the administrator. It shall be the affirmative responsibility and continuing duty of each licensee and advance deposit sports wagering operator and their employees to follow and comply with all internal controls. The submission shall include controls and reasonable methods that provide for the following:

a. To prohibit wagering by coaches, athletic trainers, officials, players, or other individuals who participate and persons employed in a position with direct involvement with coaches, athletic trainers, officials, players or other individuals who participate in an authorized sporting event in which wagers may be accepted. Licensees shall demonstrate the capability, subject to review and approval by the administrator, to prevent prohibited persons from wagering on events on which they are not allowed to wager by implementing one of the following:

(1) Organize and maintain a list of prohibited persons.

(2) Participate in a third-party association or group that organizes and maintains a list of prohibited persons.

b. To identify and suspend accounts opened by individuals on behalf of persons under the age of 21.

c. To promptly report to the commission any criminal or disciplinary proceedings commenced against the licensee or its employees.

d. To promptly report to the commission, in a format approved by the administrator, any abnormal wagering activity or patterns that may indicate a concern about the integrity of an authorized sporting event or events, and any other conduct with the potential to corrupt a wagering outcome of an authorized sporting event for purposes of financial gain, including but not limited to match fixing, and suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, account sharing, or use of false identification. Integrity-monitoring procedures shall also provide for the sharing of information with other licensees, other governing authorities, and accredited sports governing entities by participating in an integrity-monitoring association or group or by another method as approved by the administrator.

e. Written notification to the commission for any incident where there is a violation involving criminal activity, Iowa Code chapter 99F, a commission rule or order, or an internal control within 72 hours of detection. The licensee or advance deposit sports wagering operator shall provide a written report detailing the violation as required by and in a format approved by the administrator.

f. The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

g. User access controls for all sensitive and secure, physical and virtual, areas and systems within a sports wagering operation.

h. Treatment of problem gambling by:

(1) Identifying problem gamblers.

(2) Complying with the process established by the commission pursuant to Iowa Code section 99F.4(22) and 491—subrule 5.4(12).

(3) Cooperating with the Iowa gambling treatment program in creating and establishing controls.

(4) Including information on the availability of the gambling treatment program in a substantial number of the licensee's advertisements and printed materials.

i. Setoff winnings of customers who have a valid lien established under Iowa Code chapter 99F.

13.2(8) Revenue reporting. Reports generated from the sports wagering system shall be made available as determined by the commission. The reporting system shall be capable of issuing reports by wagering day, wagering month, and wagering year. Wagering data shall not be purged unless approved by the commission. The reporting system shall provide for a mechanism to export the data for the purposes of data analysis and auditing or verification. The reporting system shall be able to provide, at a minimum, the following sports wagering information:

- a. The date and time each event started and ended.
- b. Total amount of wagers collected.
- c. Total amount of winnings paid to players.
- d. Total amount of wagers canceled, voided, and expired.
- e. Commission or fees collected.
- f. Total value of promotional play or free play used to purchase or execute a sports wager.
- g. Event status.
- h. Total amount held by the operator for the player accounts.
- i. Total amount of wagers placed on future events.
- j. Total amount of winnings owed but unpaid by the operator on winning wagers.
- k. The date, time, stake amount, win amount and individual associated with each event where winnings are required to be reported on Internal Revenue Service form W-2G, as recorded by the reporting system.

13.2(9) Unclaimed winnings and abandoned accounts. Unclaimed winnings and abandoned accounts are subject to the following requirements:

- a. Abandoned player accounts under this rule are subject to Iowa Code chapter 556.
- b. Player accounts are considered abandoned if no activity by the account holder has occurred for three years. Player activity includes making a wager, making an account deposit, or withdrawing funds.
- c. No licensee or advance deposit sports wagering operator shall charge an administration fee or maintenance fee for any inactive player account derived from state of Iowa residents at any time for any reason.

13.2(10) Annual audit. If a vendor is conducting sports wagering for a casino licensee, an audit of the sports wagering operations for the vendor or parent company of the vendor shall be conducted by certified public accountants authorized to practice in the state of Iowa, and the audit shall be provided to the commission within 90 days of the vendor's fiscal year and meet the following conditions:

- a. Inclusion of an internal control letter, audited balance sheet, and audited profit-and-loss statement including a breakdown of expenditures and subsidiaries of sports wagering activities.
- b. Inclusion of a supplement schedule indicating financial activities on a calendar-year basis if the vendor's fiscal year does not correspond to the calendar year.
- c. Inclusion of a supplement schedule for all Iowa locations in which the vendor operates.
- d. Report of any material errors, irregularities that may be discovered during the audit, or notice of any audit adjustments.
- e. Availability, upon request, of an engagement letter for the audit between the vendor or parent company of the vendor and the auditing firm.

13.2(11) Revenue reports. Licensees and advance deposit sports wagering operators shall provide additional reports, as determined necessary by the administrator, that detail the revenue submission required by 491—paragraph 5.4(10)“d.” Reports shall be provided to the commission in a format approved by the administrator. The administrator shall provide written notice to any licensee if additional reports are determined necessary. In addition, the administrator shall provide adequate time to any licensee if a report needs to be created to satisfy this requirement.

13.2(12) Ticket payouts. A method shall be available for players to collect at any time during the facility's hours of operation winnings from wagers made in person at a facility. Winnings required to be reported on Internal Revenue Service Form W-2G are exempt from this requirement.

13.2(13) Records. Licensees shall provide all information requested by the commission. Access to this information shall be prompt, and copies of the information shall be delivered within seven days or less as ordered or requested by the commission. The licensees shall ensure all books and records

and the retention of all books and records comply with 491—subrule 5.4(14). All records pertaining to wagers shall be available to allow for player complaint resolution. All records pertaining to the accounts of persons who registered or have account activity in Iowa shall be available to allow for audits and investigations.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; see Suspension note at end of chapter; ARC 5016C, IAB 4/8/20, effective 5/13/20; see Delay note at end of chapter; ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6895C, IAB 2/22/23, effective 3/29/23; ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—13.3(99F) Approval of sports wagers.

13.3(1) Approval. Prior to offering a sports wager, a facility or advance deposit sports wagering operator shall request that the administrator investigate and approve the sports wager for compliance with commission rules and any other standards as required by the commission. The administrator may require the facility or advance deposit sports wagering operator, at the facility's or operator's own expense, to provide additional information as deemed necessary to make a determination. Prior to approval, the administrator may require a trial period of any sports wager offering. Once a sports wager is approved by the administrator, unless it is subsequently disapproved for any reason deemed appropriate by the administrator, the sports wager is available for all operators under the conditions approved and subject to subrule 13.3(2).

13.3(2) Sports wager submissions. Prior to conducting a sports wager approved pursuant to subrule 13.3(1), a licensee or advance deposit sports wagering operator shall submit proposals for the wager, including but not limited to wagering rules, payout information, source of the information used to determine the outcome of the sports wager, and any restrictive features of the wager. The sports wager submission, or requests for modification to an approved wager, shall be submitted in writing and approved by the administrator prior to implementation.

13.3(3) Sports promotional contests, tournaments, or promotional activities. Sports promotional contests, tournaments, or promotional activities may be permitted by the licensee, vendor, or advance deposit sports wagering operator providing the following:

- a. Rules shall be made available to participants for review prior to registering. Rules shall include, at a minimum: all conditions registered players must meet to qualify to enter or advance through the event, available prizes or awards, fees, and distribution of prizes or awards based on specific outcomes.
- b. Rules are followed. Changes to rules shall not be made after participants have registered.
- c. Results shall be made available for the registered players to review at the same location at which or in the same manner in which players registered. Results shall include, at a minimum: name of the event, date of the event, total number of entries, amount of entry fees, total prize pool, and amount paid for each winning category.
- d. Fees collected, less cash prizes paid, are subject to the wagering taxes pursuant to Iowa Code section 99F.11(4). In determining sports wagering net receipts, to the extent that cash prizes paid out exceed fees collected, the licensee or advance deposit sports wagering operator shall be deemed to have paid the fees for the participants.
- e. Rules include terms and conditions. All emails or digital advertisements promoting contests, tournaments, and promotional activities shall include a link or other easily obtainable source that includes rules or terms and conditions.
- f. There is compliance with all other federal, state, and local laws and rules outside of the commission's jurisdiction.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5422C, IAB 2/10/21, effective 3/17/21]

491—13.4(99F) Designated sports wagering area. A floor plan identifying the designated sports wagering area, including the location of any device used to assist in the placement, resolution or collection of any sports wager, shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. Designated wagering areas shall contain conspicuous signage which denotes that an individual must be at least 21 years of age to wager on sports. Exceptions to this rule must be approved

in writing by the administrator. The sports wagering area is subject to compliance with 491—subrule 5.4(7).

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6169C, IAB 2/9/22, effective 3/16/22]

491—13.5(99F) Advance deposit sports wagering.

13.5(1) Authorization to conduct advance deposit sports wagering. A licensee or advance deposit sports wagering operator shall receive specific authorization from the commission to conduct advance deposit sports wagering prior to conducting advance deposit sports wagering. The granting of an advance deposit sports wagering license or approval of any agreements between a licensee and an advance deposit sports wagering operator to conduct advance deposit sports wagering does not constitute authorization. Any entity authorized to conduct advance deposit sports wagering is expected to comply with all requirements of this chapter, except for rule 491—13.4(99F), and all other applicable federal, state, local, and commission requirements.

13.5(2) Account registration. A person must have an established account in order to place advance deposit sports wagers. The process for establishing an account is subject to the administrator's approval. An account may be established through on-site registration under procedures previously approved by the administrator, or through remote registration. To establish an account, an application for an account shall be signed or otherwise authorized in a manner approved by the administrator and shall include the applicant's full legal name, principal residential address, date of birth, last four digits of the social security number, and any other information required by the administrator. The account registration process shall also include:

a. Age verification to prevent persons under the legal age for sports wagering from establishing an account.

b. An applicant verification process that includes an exact match of the following:

- (1) Date of birth, including month, date and year of birth.
- (2) The last four digits of the social security number.
- (3) Last name.

c. An applicant verification process that permits a flexible match by allowing the following:

- (1) First name may include nicknames and abbreviations.
- (2) Address may include abbreviations.

d. Authentication of identification by:

- (1) Answering knowledge-based questions based on the applicant's public or private data; or
- (2) Verifying that device ID and phone number match the applicant's publicly known data; or
- (3) Comparing of valid government-issued ID to applicant's picture taken at time of account registration; or

(4) Another method as approved by the administrator.

e. Verification that the applicant is not on the statewide self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

f. Availability and acceptance of a set of terms and conditions that is also readily accessible to the player before and after registration and noticed when updated. Notices shall include, at a minimum, the following:

(1) Explanation of rules in which any unrecoverable malfunctions of hardware/software are addressed including, but not limited to, if the unrecoverable malfunction, wagering event cancellation, or other catastrophic malfunction results in the voiding of any wagers.

(2) Procedures to deal with interruptions caused by the suspension of data flow from the network server during an event.

(3) Specifications advising players to keep their account credentials secure.

(4) Statement that no underage individuals are permitted to participate in wagering.

(5) Explanation of conditions under which an account is declared inactive and actions undertaken on the account once this declaration is made.

g. Availability and acceptance of a privacy policy that is also readily accessible to the player before and after registration and noticed when updated and that includes, at a minimum, the following:

(1) Statement of information that is collected, the purpose for information collection, and the conditions under which information may be disclosed.

(2) Statement that any information obtained in respect to player registration or account establishment must be done in compliance with the privacy policy.

(3) Requirement that any information about player accounts which is not subject to disclosure pursuant to the privacy policy must be kept confidential, except where the release of that information is required by law.

(4) Requirement that all player information must be securely erased from hard disks, magnetic tapes, solid state memory, and other devices before the device is properly disposed of by the licensee. If erasure is not possible, the storage device must be destroyed.

h. If an advance deposit sports wagering operator has an agreement with more than one licensee, the advance deposit sports wagering operator shall submit an agreement to the administrator that indicates the manner in which customer net receipts shall be assigned with its licensee partners. The agreement shall include all partnering licensees and their respective qualified sponsoring organizations, and the net receipts shall be allocated using one of the following methods:

(1) Make available an option for new remotely registered customers to select the licensee at which net receipts are assigned.

(2) Allocate new remotely registered customer net receipts to the licensee which is located nearest to the customer's principal residential address.

(3) Distribute all customer receipts evenly between all licensees for which an agreement exists.

(4) An alternative allocation agreement that complies with local, state and federal law.

The agreement shall be made available for public inspection.

13.5(3) *Operation of an account.* The advance deposit sports wagering operator or a licensee shall submit controls, approved by the commission, that include the following for operating an account:

a. Specific procedures and technology partners to fulfill the requirements set forth in subrule 13.5(2).

b. Location detection procedures to reasonably detect and dynamically monitor the location of a player attempting to place any wager or perform other account activities as identified by the advance deposit sports wagering operator or licensee, related to an Iowa authorized account. Account activity-based location detection controls shall be informed by industry best practices and any commission guidelines for the detection of fraud or other unauthorized or illegal activity. The advance deposit sports wagering operator or licensee shall utilize and monitor geolocation activity to detect potential fraudulent and suspicious activity, which shall be reported in accordance with paragraph 13.2(7) "d." A player outside the permitted boundary attempting to make a wager shall be rejected, and the player shall be notified. The confidence radius shall be entirely located within the permitted boundary.

c. Specific controls set forth in subrule 13.2(7).

d. Limitation of one active account, per individually branded website, at a time unless otherwise authorized by the commission.

e. Authentication for login using a multifactor authentication process or other secure alternative means as authorized by the commission. After successful login, multifactor authentication will need to be performed at least every 14 days for each unique device. Processes for retrieving lost usernames and passwords shall be available, secure, and clearly disclosed to the player. Players shall be allowed to change their passwords.

f. Immediate notification to the player when changes are made to any account used for financial transactions or to registration information or when financial transactions are made unless other notification preferences are established by the player.

g. Process to immediately notify a player following an unusual login attempt. In the event that the unusual login attempt constitutes suspicious activity or if other suspicious activity is detected, an account shall be locked. A multifactor authentication process must be employed for the account to be unlocked.

h. Process for players to easily impose limitations or notifications for wagering parameters including, but not limited to, deposits and wagers. Self-imposed limitations must be applied

automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours.

i. Process for players to easily self-exclude from wagering for a specified period of time and indefinitely. Self-exclusions must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made to reduce the severity of the self-exclusion limitations for at least 24 hours. In the event of indefinite self-exclusion, the advance deposit sports wagering operator or licensee must ensure that the player is paid in full for the player's account balance within a reasonable time provided that the advance deposit sports wagering operator or licensee acknowledges that the funds have cleared. Players must be easily and obviously directed via a link to exclude themselves pursuant to Iowa Code section 99F.4(22). This control does not supersede the requirements set forth in Iowa Code section 99F.4(22).

j. Process to review and deactivate accounts of newly enrolled participants of the statewide self-exclusion program set forth in Iowa Code section 99F.4(22). The operator must ensure that players are paid in full for their account balance within a reasonable time provided that the operator acknowledges that the funds have cleared.

k. Provide for an easy and obvious method for a player to make a complaint and to enable the player to notify the commission if such complaint has not been or cannot be addressed by the advance deposit sports wagering operator or licensee.

13.5(4) Account funds. The following requirements apply to the maintenance of funds associated with a player account:

a. Positive player identification, including any personal identification number (PIN) entry or other approved secure methods, must be completed before the withdrawal of any moneys held by the advance deposit sports wagering operator or licensee can be made.

b. Payments from an account are to be paid directly to an account with a financial institution in the name of the player or made payable to the player and forwarded to the player's address or through another method that is not prohibited by state or federal law.

c. An advance deposit sports wagering operator or licensee must have in place security or authorization procedures to ensure that only authorized adjustments can be made to player accounts and that changes are auditable.

d. It shall not be possible to transfer funds between two player accounts.

e. An advance deposit sports wagering operator or licensee shall provide a transaction log or account statement history at no cost to players upon request. Information provided shall include sufficient information to allow players to reconcile the statement or log against their own financial records.

f. Requests for withdrawals shall not be unreasonably withheld and shall be completed in a timely manner.

g. An advance deposit sports wagering operator or licensee shall provide a fee-free method for players to deposit or withdraw funds from player accounts.

h. If the method of reserve utilized to comply with subrule 13.2(6) is not in the form of cash or cash equivalents segregated from operational funds, an advance deposit sports wagering operator or licensee shall segregate player account funds from operational funds.

13.5(5) Annual audit. An audit of the advance deposit sports wagering operations for the advance deposit sports wagering operator or licensee or parent company of the advance deposit sports wagering operator or licensee shall be conducted by certified public accountants authorized to practice in the state of Iowa and provided to the commission within 90 days of the licensee's fiscal year and meet the following conditions:

a. Inclusion of an internal control letter, audited balance sheet, and audited profit-and-loss statement including a breakdown of expenditures and subsidiaries of advance deposit sports wagering activities.

b. Inclusion of a supplement schedule indicating financial activities on a calendar-year basis if the advance deposit sports wagering operator's or licensee's fiscal year does not correspond to the calendar year.

c. Report of any material errors, irregularities that may be discovered during the audit, or notice of any audit adjustments.

d. Availability, upon request, of an engagement letter for the audit between the advance deposit sports wagering operator or licensee or parent company of the advance deposit sports wagering operator or licensee and the auditing firm.

e. Inclusion of a supplemental schedule for Iowa operations. A supplemental schedule shall include a breakdown of advance deposit sports wagering activities by each Iowa casino in which there is an agreement. The supplemental schedule provided to satisfy this requirement may be unaudited; however, the top financial officer of the company shall provide a statement attesting to the accuracy of the information provided to the commission.

13.5(6) *Wagers.* An advance deposit sports wagering operator shall display a player's wagers in a readily accessible manner.

13.5(7) *Expiration or termination of an Iowa Code section 99F.7A operating agreement.* In the event an advance deposit sports wagering operating agreement between a licensee under Iowa Code section 99F.7A and another entity expires, terminates, or is no longer valid, notice of termination must be given to the commission and all customers affiliated with the licensee. A customer shall be given an opportunity to close an account. If the advance deposit sports wagering operator has an operating agreement with other licensees in the state of Iowa, the customer shall have the option to select another partner licensee to which their net receipts shall be assigned, or the customer's net receipts shall be assigned to any remaining partner licensees in accordance with an agreement submitted to the administrator pursuant to paragraph 13.5(2) "h."

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5422C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6895C, IAB 2/22/23, effective 3/29/23; ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—13.6(99F) Testing.

13.6(1) *Initial testing.* All equipment and systems integral to the conduct of sports wagering and advance deposit sports wagering shall be tested and certified for compliance with commission rules and the standards required by a commission-designated independent testing laboratory. Certification and commission approval must be received prior to the use of any equipment or system to conduct sports wagering. The commission may designate more than one independent testing laboratory.

13.6(2) *Change control.* The licensees and advance deposit sports wagering operators shall submit change control processes that detail evaluation procedures for all updates and changes to equipment and systems to the administrator for approval at least 30 days prior to operation. These processes shall include, at a minimum, descriptions of the following areas of licensee operations:

- a. Process to classify all changes according to organizational risk.
- b. Process to designate whether changes must be submitted to an independent testing laboratory for review and certification.
- c. Process for emergency change determination and implementation.
- d. Process to log or note changes. Must include the details logged for each change, including but not limited to the following areas:
 - (1) Date and time of change or proposed date and time of change.
 - (2) Basic description of changes to be implemented.
 - (3) Change classification of change or changes, determined in accordance with the process established by paragraph 13.6(2) "a." If emergency designation is separate from other change classifications, this shall also be included in the log or note.
 - (4) Identification of whether a change was submitted to an independent testing laboratory, and the certification report number of any testing.
- e. Process to maintain logs or notify the commission of changes.

13.6(3) *Annual testing.*

a. A system integrity and security risk assessment shall be performed annually on the advance deposit sports wagering system.

(1) The testing organization must be independent of the licensee and shall be qualified by the administrator.

(2) The system integrity and security risk assessment shall be completed no later than March 31 of each year.

(3) Results from the risk assessment shall be submitted to the administrator no later than 60 days after the assessment is completed. Results shall include a remediation plan to address any risks identified during the risk assessment.

(4) The risk assessment shall be conducted in accordance with current and accepted industry standard review requirements for risk assessments.

(5) The risk assessment shall include a review of licensee controls. Review of controls shall include but not be limited to a comparison of licensee controls to industry standard and best practice controls, and an audit of the licensee processes for compliance with those controls.

b. A geolocation system and integrity test shall be performed annually on the advance deposit wagering system.

(1) The testing organization must be independent of the licensee and the licensed geolocation vendor and shall be qualified by the administrator.

(2) The geolocation test shall be completed and the results submitted no later than March 31 of each year.

(3) Geolocation testing shall review existing licensee procedures for detecting and reporting fraudulent activity associated with any account activity detected by the geolocation system, and shall recommend updates to those procedures to align with any current or updated industry standard or commission guidance.

c. At the discretion of the administrator, additional assessments or specific testing criteria may be required.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6895C, IAB 2/22/23, effective 3/29/23; ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—13.7(99F) Licensing.

13.7(1) *Application and payment of fee.* The commission shall, upon payment of an initial license fee of \$45,000 and submission of an application consistent with the requirements of Iowa Code section 99F.6, issue a license to conduct sports wagering to a facility.

13.7(2) *Application procedure for a facility.* Application for a license for a facility to conduct sports wagering shall be made to the commission. In addition to the application, the following must be completed and presented when the application is filed:

a. Name of the entity to be licensed by the commission to conduct sports wagering operations in Iowa.

b. Disclosure of agreements with entities to manage or operate sports wagering with or on behalf of the facility.

c. Disclosure of operating agreements for up to two, or three if authorized by the commission, individually branded internet sites to conduct advance deposit wagering for the facility.

d. Compliance with Iowa Code section 99F.6(4)“a”(2) and (3) requirements for qualified sponsoring organizations or horse racing purses.

e. A bond or irrevocable letter of credit on behalf of the facility in an amount to be determined by the commission.

f. A bank check, cashier’s check, or wire transfer made payable to Iowa Racing and Gaming Commission for \$45,000 for an initial license or \$10,000 for a renewal license.

13.7(3) *Application procedure for an advance deposit sports wagering operator.* Application for a license for an advance deposit sports wagering operator with an agreement with a facility shall be made to the commission for approval by the administrator. In addition to the application, the following must be completed and presented when the application is filed:

a. Disclosure of ownership interest, directors, or officers of applicant.

(1) An applicant or licensee shall notify the administrator of the identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require.

For purposes of this rule, the term “beneficial interest” includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

(2) For ownership interests of less than 5 percent, the administrator may request a list of these interests. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subparagraph 13.7(3) “a”(1) above.

b. Investigative fees.

(1) Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning investigation.

(2) Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

c. A copy of each of the following:

(1) List of employees of the aforementioned who may have contact with persons within the state of Iowa.

(2) Agreement with facility to operate or manage the advance deposit sports wagering operation.

d. Any and all changes in the applicant’s legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

e. The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, or professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

f. Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

g. Public disclosure is made for the benefit of the public, and documents pertaining to the ownership filed with the administrator shall be available for public inspection in accordance with 491—Chapter 3.

13.7(4) *Supplementary information.* Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the requested information within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

13.7(5) *Temporary license certificates.*

a. A temporary license certificate may be issued at the discretion of the administrator.

b. Any temporary license certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue. Failure to obtain a permanent license within the designated time may result in revocation of license eligibility, fine, or suspension.

13.7(6) *Withdrawal of application.* A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

13.7(7) *Record keeping.*

a. Record storage required. Licensees and advance deposit sports wagering operators shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and advance deposit sports wagering operators and any of their customers who are applicants or licensees under Iowa Code chapter 99F.

(3) A personnel file on each employee of the licensee and advance deposit sports wagering operator, including sales representatives.

(4) Financial records of all transactions with facilities and all other licensees and advance deposit sports wagering operators under these rules.

b. Record retention. Records other than those listed in subrule 13.2(8) shall be retained as required by 491—subrule 5.4(14).

13.7(8) *Violation of laws or regulations.* Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee or advance deposit sports wagering operator, or any combination of the above. The commission has the discretion to suspend mobile gaming operations of its licensees by written order if necessary.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5422C, IAB 2/10/21, effective 3/17/21]

These rules are intended to implement Iowa Code chapters 99D and 99F.

[Filed Emergency ARC 4618C, IAB 8/28/19, effective 7/31/19]¹

[Filed ARC 5016C (Amended Notice ARC 4807C, IAB 12/18/19; Notice ARC 4617C, IAB 8/28/19), IAB 4/8/20, effective 5/13/20]²

[Filed ARC 5422C (Notice ARC 5269C, IAB 11/18/20), IAB 2/10/21, effective 3/17/21]

[Filed ARC 6169C (Notice ARC 6056C, IAB 11/17/21), IAB 2/9/22, effective 3/16/22]

[Filed ARC 6895C (Notice ARC 6610C, IAB 11/2/22), IAB 2/22/23, effective 3/29/23]

[Filed ARC 7634C (Notice ARC 7070C, IAB 9/20/23), IAB 2/21/24, effective 3/27/24]

¹ Applicability of paragraph 13.2(7)“i” suspended until the adjournment of the 2020 session of the General Assembly by the Administrative Rules Review Committee at its meeting held August 12, 2019. Suspension superseded by adoption of paragraph 13.2(7)“i” in ARC 5016C, effective 5/13/20.

² Applicability of paragraph 13.2(7)“i” delayed until the adjournment of the 2021 session of the General Assembly by the Administrative Rules Review Committee at its meeting held May 8, 2020.

CHAPTER 14
FANTASY SPORTS CONTESTS

491—14.1(99E) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

“Administrator” means the administrator of the racing and gaming commission or the administrator’s designee.

“Applicant” means an internet fantasy sports contest service provider applying for a license to conduct internet fantasy sports contests under this chapter.

“Commission” means the state racing and gaming commission created under Iowa Code section 99D.5.

“Entry fee” means cash or cash equivalent that is required to be paid by an internet fantasy sports contest player to an internet fantasy sports contest service provider in order to participate in a fantasy sports contest.

“Fantasy sports contest” or *“contest”* means a fantasy or simulated game or contest in which:

1. The fantasy sports contest operator is not a participant in the game or contest;
2. The value of all prizes and awards offered to winning participants are established and made known to the participants in advance of the contest;
3. All winning outcomes reflect the relative knowledge and skill of the participants;
4. The outcome shall be determined by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events; and
5. No winning outcome is solely based on the score, point spread, or any performance or performances of any single actual team or solely on any single performance of an individual athlete or player in any single actual event.

“Fantasy sports contest service provider” means a person, including a licensee under Iowa Code chapter 99D, 99E or 99F, who conducts an internet fantasy sports contest as authorized by this chapter.

“Highly experienced player” means a person who has entered more than 1,000 contests conducted by a single fantasy sports contest service provider or has won more than three fantasy sports contest prizes of \$1,000 or more from a single fantasy sports contest service provider. A fantasy sports contest provider may declare other players a “highly experienced player” so long as the provider’s criteria for declaration would include players previously declared a “highly experienced player” by the provider.

“Internal controls” means the fantasy sports contest service provider’s system of internal controls.

“Licensee” means any person licensed under Iowa Code section 99E.5 to conduct internet fantasy sports contests.

“Location percentage” means, for each internet fantasy sports contest, the percentage, rounded to the nearest tenth of a percent, equal to the total charges and fees collected from all internet fantasy sports contest players located in this state divided by the total charges and fees collected from all participants in the internet fantasy sports contest.

“Net revenue” means an amount equal to the total entry and administrative fees collected from all participants entering fantasy sports contests less winnings paid to participants in the contest, multiplied by the location percentage.

“Player” or *“customer”* means a person who is at least 21 years of age and participates in an internet fantasy sports contest operated by an internet fantasy sports contest service provider.

“Prize” means anything of value, including cash or a cash equivalent, contest credits, merchandise or entry to another contest in which a prize may be awarded.

“Script” means a list of commands that a fantasy sports-related computer program can execute and is created by fantasy sports players, or by third parties for the use of all players, to automate processes on a fantasy sports contest internet platform.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

491—14.2(99E) Application for fantasy sports contest service provider license and licensing. A fantasy sports contest service provider must be licensed by the commission to offer an internet fantasy

sports contest under Iowa Code chapter 99E. Any individuals who are required to be occupationally licensed by the commission shall comply with the license requirements of Iowa Code section 99E.5 and rules 491—6.2(99D,99E,99F,252J) to 491—6.13(99D,99F,272D). Occupational licensees are also subject to 491—Chapter 4.

14.2(1) *Licensing standards.* Standards which shall be considered when determining the qualifications of an applicant shall include, but are not limited to, financial stability; business ability and experience; good character and reputation of the applicant as well as all directors, officers, partners, and employees and integrity of financial backers. For the purposes of this rule, the term “applicant” includes each member of the board of directors or other governing body of an applicant.

a. The commission shall not grant a license to an applicant if there is substantial evidence that any of the following apply:

(1) A license issued to the applicant to conduct internet fantasy sports contests in another jurisdiction has been revoked, or a request for a license to conduct internet fantasy sports contests in another jurisdiction has been denied, by an entity licensing persons to conduct such contests in that jurisdiction.

(2) The applicant has not demonstrated financial responsibility sufficient to adequately meet the requirements of the enterprise proposed.

(3) The applicant does not adequately disclose the true owners of the enterprise proposed.

(4) The applicant has knowingly made a false statement of a material fact to the commission.

(5) The applicant has failed to meet a monetary obligation in connection with conducting an internet fantasy sports contest.

(6) The applicant is not of good repute and moral character or the applicant has pled guilty to, or has been convicted of, a felony.

(7) Any member of the board of directors or governing body of the applicant is not 21 years of age or older.

b. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

14.2(2) *Application procedure.* Application for an internet fantasy sports contest service provider license shall be made to the commission on the form prescribed and published by the commission. In addition to the application, the following must be completed and presented when the application is filed:

a. Disclosure of ownership interest, directors, or officers of applicant.

b. The identity and date of birth of each member of the board of directors or other governing body of the applicant.

c. The identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require. For purposes of this rule, the term “beneficial interest” includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

d. For ownership interests of less than 5 percent, the administrator may request a list of these interests. At a minimum, the list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subrule 14.2(1).

e. A list of employees of the aforementioned who may be conducting business directly or indirectly on behalf of the applicant in the state of Iowa.

f. A bond or irrevocable letter of credit on behalf of the applicant or other satisfactory evidence, as determined by the commission, of a safe and reliable means of fulfilling the applicant’s obligations to customers and the state of Iowa in an amount determined by the commission.

14.2(3) *Investigative fee.*

a. Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning the investigation.

b. Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

14.2(4) *Application fee.* A bank or cashier's check shall be made payable to Iowa Racing and Gaming Commission for \$5,000.

14.2(5) *Reporting of changes.* Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

14.2(6) *Ineligibility.* The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, or professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

14.2(7) *Disclosure.* Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

14.2(8) *Public disclosure.* Disclosure is made for the benefit of the public, and all documents pertaining to the ownership filed with the administrator shall be available for public inspection.

14.2(9) *Supplementary information.* Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the requested information within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

14.2(10) *Requirements placed upon applicants and licensees.* For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—14.3(99E) Temporary license certificates.

14.3(1) A temporary license certificate may be issued at the discretion of the administrator.

14.3(2) Any temporary license certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue. Failure to obtain a permanent license within the designated time may result in revocation of license eligibility, fine, or suspension.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—14.4(99E) Withdrawal of application. A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—14.5(99E) Fees.

14.5(1) Initial license. Once the commission is satisfied that the requirements of this chapter have been met, an applicant will be granted an initial license for up to three years.

14.5(2) Annual license fee. After the initial licensing period, a licensee shall pay an annual fee of \$1,000 for licensees with a yearly adjusted gross revenue under \$150,000 or \$5,000 for licensees with a yearly adjusted gross revenue of \$150,000 or greater. The administrator shall set the time period for determining a licensee's adjusted gross revenue. Licenses must be renewed annually in a manner established by the commission.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—14.6(99E) Taxes.

14.6(1) The licensee shall pay a tax rate pursuant to Iowa Code section 99E.6 on adjusted revenue from fantasy sports contests. "Adjusted revenue" means the amount equal to the total charges and fees collected from all participants entering the fantasy sports contest less winnings paid to participants in the contest, multiplied by the location percentage defined in Iowa Code section 99E.1. Charges and fees returned to participants due to a participant withdrawing the participant's entry from a fantasy sports contest shall not be considered when calculating the adjusted revenue. Contests resulting in negative adjusted revenue shall be considered promotional in nature and cannot be used to offset taxes owed pursuant to Iowa Code section 99E.6.

14.6(2) Voided and canceled transactions are not considered receipts for the purpose of this calculation.

14.6(3) Any offering used to directly participate in a contest shall be considered receipts for the purpose of this calculation.

14.6(4) Any other fee collected to participate in a fantasy sports contest shall be subject to the wagering tax pursuant to Iowa Code section 99E.6.

14.6(5) All moneys collected for and owed to the state of Iowa under Iowa Code chapter 99E for the payment of fantasy sports contests shall be accounted for and itemized on a monthly basis, in a format approved by the commission, by noon on Wednesday following a gaming week's end as defined by 491—subparagraph 5.4(10) "b"(1) in which the completed gaming week includes the last day of the month. All fantasy sports contest fees owed shall be received in the treasurer's office by 11 a.m. on the Thursday after accounting and itemization is due in the commission office.

14.6(6) Fantasy sports operators shall provide additional reports, as determined necessary by the administrator, that detail the taxes collected in accordance with this rule. Reports shall be provided to the commission in a format approved by the administrator. The administrator shall provide written notice to any licensee if additional reports are determined necessary. In addition, the administrator shall provide adequate time to any licensee if a report needs to be created to satisfy this requirement.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5422C, IAB 2/10/21, effective 3/17/21]

491—14.7(99E) Account registration. A person must have an established account in order to participate in fantasy sports contests. To establish an account, an application for an account shall be authorized in a manner approved by the administrator and shall include the applicant's full legal name, principal residential address, date of birth and any other information required by the commission. The account registration process shall also include:

14.7(1) Age verification to prevent persons under the legal age from participating in fantasy sports contests and establishing an account.

14.7(2) Customer verification.

a. A customer verification process shall include an exact match of the following:

- (1) Date of birth, including month, date and year of birth.
- (2) The last four digits of the social security number.
- (3) Last name.

b. A customer verification process shall permit a flexible match by allowing the following:

- (1) First name may include nicknames and abbreviations.
- (2) Address may include abbreviations.

- c. A customer verification process shall authenticate identification by the following:
- (1) Answering knowledge-based questions based on the applicant's public or private data; or
 - (2) Verifying that device ID and phone number match the applicant's publicly known data; or
 - (3) Comparing a valid government-issued ID to a photo of the applicant taken at the time of account registration; or
 - (4) Another method as approved by the administrator.

14.7(3) Verification that the customer is not on the statewide self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

14.7(4) Availability and acceptance of a set of terms and conditions that are also readily accessible to the customer before and after registration and noticed when updated. Notices shall include, at a minimum, the following:

- a. Explanation of rules in which any unrecoverable malfunctions of hardware/software are addressed including, but not limited to, if the unrecoverable malfunction, fantasy sports event cancellation, or any other catastrophic malfunction results in the voiding of any contests.
- b. Procedures to deal with interruptions caused by the suspension of data flow from the network server during a contest.
- c. Specifications advising customers to keep their account credentials secure.
- d. Statement that no underage individuals are permitted to participate in contests.

14.7(5) Availability and acceptance of a privacy policy that is also readily accessible to the customer before and after registration and noticed when updated that includes, at a minimum, the following:

- a. Statement of information that is collected, the purpose for information collection and the conditions under which information may be disclosed.
- b. Statement that any information obtained in respect to customer registration or account establishment must be done in compliance with the privacy policy.
- c. Requirement that any information about customer accounts which is not subject to disclosure pursuant to the privacy policy must be kept confidential, except where the release of that information is required by law.
- d. Requirement that all customer information must be securely erased from hard disks, magnetic tapes, solid state memory and other devices before the device is properly disposed of by the licensee. If erasure is not possible, the storage device must be destroyed.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—14.8(99E) Fantasy sports contest service provider requirements.

14.8(1) Internal controls. Licensees shall submit a description of internal controls to the administrator. The submission shall be made at least 30 days before fantasy sports contest operations are to commence unless otherwise approved by the administrator. All internal controls must be approved by the administrator prior to commencement of contest operations. The service provider shall submit to the administrator any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by the administrator. It shall be the affirmative responsibility and continuing duty of each licensee and its employees to follow and comply with all internal controls. The submission shall include controls and reasonable methods that comply with and provide for:

- a. Prevention of employees of the internet fantasy sports contest service provider and relatives living in the same household of such employees from competing in any internet fantasy sports contest on the service provider's digital platform in which the service provider offers a prize to the public.
- b. Verification that any fantasy sports contest player is 21 years of age or older.
- c. Restriction of entries from coaches, officials, athletes, contestants, or other individuals who participate in a game or contest that is the subject of an internet fantasy sports contest in which the outcome is determined, in whole or in part, by the accumulated statistical results of a team of individuals in the game or contest in which they participate. Licensees shall demonstrate the capability, subject to

review and approval by the administrator, to prevent prohibited persons from participating in contests in which they are not allowed to participate by implementing one of the following:

- (1) Organize and maintain a list of prohibited persons.
- (2) Participate in a third-party association or group that organizes and maintains a list of prohibited persons.
 - d.* An easy and obvious method for a player to make a complaint and to enable the player to notify the commission if such complaint has not been or cannot be resolved by the licensee.
 - e.* Measures used to determine the true identity, date of birth, and address of each player seeking to open an account.
 - f.* Standards and procedures used to monitor fantasy sports contests to detect the use of unauthorized scripts and restrict players found to have used such scripts from further fantasy sports contests.
 - g.* Prevention of unauthorized withdrawals from a registered player's account by the service provider or others.
 - h.* How the service provider will accept wagers within the permitted boundary.
 - i.* How the service provider will segregate fantasy sports contest player funds from operational funds.
 - j.* Protection of a fantasy sports contestant's personal and private information.

14.8(2) Records. Licensees shall provide all information requested by the commission. Access to this information shall be prompt, and copies of the information shall be delivered within seven days or less as ordered or requested by the commission. The licensees shall ensure all books and records and the retention of all books and records comply with 491—subrule 5.4(14). All records pertaining to contests shall be available to allow for player complaint resolution. All records pertaining to the accounts of persons who registered or have account activity in Iowa shall be available to allow for audits and investigations.

14.8(3) Reporting. The licensee shall provide prompt notification of any facts which the licensee has reasonable grounds to believe indicate a violation of law or commission rule committed by licensees, their key persons, or their employees, including without limitation the performance of licensed activities different from those permitted under their license. The licensee is also required to provide a detailed written report within seven business days, or a time frame otherwise approved by the administrator, from the discovery for any of the following:

- a.* Criminal or disciplinary proceedings commenced against the service provider or its employees in connection with its operations;
- b.* Abnormal contest activity or patterns that may indicate a concern about the integrity of an internet fantasy sports contest;
- c.* Any other conduct with the potential to corrupt an outcome of an internet fantasy sports contest for purposes of financial gain, including but not limited to match fixing;
- d.* Suspicious or illegal internet fantasy sports contest activities, including the use of funds derived from illegal activity, deposits of money to enter an internet fantasy sports contest to conceal or launder funds derived from illegal activity;
- e.* The use of agents to enter an internet fantasy sports contest or use of false identification.

14.8(4) Technical and testing requirements.

a. Initial testing. All equipment and systems integral to the conduct of fantasy sports contests shall be tested and certified for compliance with commission rules and the standards required by a commission-designated independent testing laboratory. Certification and commission approval must be received prior to the use of any equipment or system to conduct a fantasy sports contest. The commission may designate more than one independent testing laboratory.

b. Change control. The fantasy sports contest service providers shall submit change control processes that detail evaluation procedures for all updates and changes to equipment and systems to the administrator for approval. These processes shall include details for identifying criticality of updates and determining of submission of updates to an independent testing laboratory for review and certification.

c. Annual testing.

(1) A system integrity and security risk assessment shall be performed annually on the fantasy sports contest system.

1. The testing organization must be independent of the licensee and shall be qualified by the administrator.

2. The system integrity and security risk assessment shall be completed no later than March 31 of each year. Results shall include a remediation plan to address any risks identified during the risk assessment.

3. Results from the risk assessment shall be submitted to the administrator no later than 60 days after the assessment is completed.

4. The risk assessment shall be conducted in accordance with current and accepted industry standard review requirements for risk assessments.

5. The risk assessment shall include a review of licensee controls. Review of controls shall include but not be limited to a comparison of licensee controls to industry standard and best practice controls, and an audit of the licensee processes for compliance with those controls.

(2) At the discretion of the administrator, additional assessments or specific testing criteria may be required.

d. Limit on number of websites and platforms. A fantasy sports contest service provider is authorized to conduct no more than two websites or platforms maintained and operated by the service provider.

14.8(5) Operating requirements. A fantasy sports contest service provider shall ensure the following:

a. Players winning fantasy sports contests shall have winning funds deposited into their player account or be paid by other means approved by the administrator within 48 hours from the end of the contest. Players shall have a fee-free method to deposit or withdraw funds from their player account. If funds are unable to be placed in a player's account, the fantasy sports contest service provider shall mail the funds to the player's address on file within ten days.

b. Player withdrawal of funds maintained in the player account shall be completed within five business days of the request unless the licensed fantasy sports contest service provider believes, in good faith, that the player engaged in fraud or other illegal activity pursuant to Iowa Code chapter 99D, 99E or 99F.

c. Procedures allow for a player to close an account and to access the player's history, including all fantasy sports contests in which the player participated.

d. Employees of the licensee are prohibited from participation in any fantasy sports contest offered by the licensee in which a cash prize is offered to the public. This includes prohibiting relatives living in the same household as such employees from competing in any fantasy sports contests offered by any licensee.

e. Prohibition of the sharing of confidential information that could affect fantasy sports contest play with third parties until the information is made publicly available.

f. Players are allowed to voluntarily self-exclude in compliance with Iowa Code section 99F.4(22), and a fantasy sports contest service provider shall follow all resolutions associated with the process.

g. Authentication for login using a multifactor authentication process or other secure alternative means as authorized by the commission. After successful login, multifactor authentication will need to be performed at least every 14 days for each unique device. Processes for retrieving lost usernames and passwords shall be available, secure, and clearly disclosed to the player. Players shall be allowed to change their passwords.

h. During account setup and login, fantasy sports contest service providers shall display the following information on any interface that accepts fantasy sports contest entries:

(1) Account sharing is prohibited.

(2) Persons under the age of 21 are prohibited from entering fantasy sports contests.

(3) Any other disclosures, as required by the administrator.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 5423C, IAB 2/10/21, effective 3/17/21; ARC 6169C, IAB 2/9/22, effective 3/16/22; ARC 6895C, IAB 2/22/23, effective 3/29/23; ARC 7634C, IAB 2/21/24, effective 3/27/24]

491—14.9(99E) Contest rules.

14.9(1) Prior to conducting a new type of fantasy sports contest, a fantasy sports contest service provider shall submit proposed contest rules to the administrator. The contest submission shall be in writing and approved by the administrator prior to implementation. The administrator shall approve, deny, or request further information within three business days of submission. If the administrator takes no action within that period, the fantasy sports contest service provider may offer the requested contest unless the administrator issues a subsequent disapproval. Once a contest is approved, the contest is available for all fantasy sports contest service providers unless the contest format is subsequently disapproved by the administrator for any reason the commission deems appropriate. Fantasy sports contest service providers may offer minor variations of an approved contest type without seeking administrator approval. Minor variations include:

- a. Offering the contest format for any sport, league, association or organization previously approved by the administrator for any fantasy sports contest type;
- b. The size of the contest and number of entries permitted;
- c. Nonmaterial changes to entry fee and prize structure;
- d. The number of athletes that a contestant selects to fill a roster when completing an entry;
- e. The positions that must be filled when completing an entry;
- f. Adjustments to the scoring system; and
- g. Adjustments to a salary cap.

14.9(2) Licensees are required to comply with and ensure the following:

- a. Advertisements for contests and prizes offered by a licensee shall not target prohibited participants, underage persons, or self-excluded persons.
- b. The values of all prizes and awards offered to winning players must be established and made known to the players in advance of the contest.
- c. Introductory procedures for players are prominently displayed on the main page of the licensee's platform to explain contest play and how to identify a highly experienced player.
- d. Identification of all highly experienced players in every fantasy sports contest by a symbol attached to the players' usernames, or by other easily visible means, on all platforms supported by the licensee.
- e. Contests are not offered based on the performance of participants in high school or youth sports events.
- f. Representations or implications about average winnings from contests shall not be unfair or misleading.
- g. Prohibition of the use of unauthorized third-party scripts or unauthorized scripting programs for any contest and ensure that measures are in place to deter, detect, and prevent cheating to the extent reasonably possible. "Cheating" includes collusion and the use of cheating devices, including the use of software programs that submit entry fees or adjust the athletes selected by a player.
- h. Prominent display of information about the maximum number of entries that may be submitted for that contest for all advertised fantasy sports contests.
- i. Disclosure of the number of entries that a player may submit to each fantasy sports contest and provide reasonable steps to prevent players from submitting more than the allowable number.
- j. Opportunity for players to file a patron dispute.
- k. Conspicuously disclose the source of the data utilized in any results.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6895C, IAB 2/22/23, effective 3/29/23]

491—14.10(99E) Segregation account requirements and financial reserves.

14.10(1) Segregation. Fantasy sports contest service providers shall segregate all fantasy sports contest player funds from operational funds.

14.10(2) Financial reserves. For the protection of the funds of contest participants held in paid fantasy sports accounts, the fantasy sports contest service provider shall maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, payment processor reserves and receivables, a bond, or a combination thereof in the amount of the deposits in internet fantasy sports contest player accounts.

a. The method of reserve shall be submitted and approved by the commission prior to implementation.

b. The amount of the reserve shall be equal to, at a minimum, the sum of all registered players' funds held in player accounts originating in Iowa.

c. If, at any time, the licensee's total reserve is less than the amount required by the reserve calculation, the licensee shall notify the commission of this deficiency within 72 hours.

d. Each licensee shall continuously monitor and maintain a record of all player deposits and the licensee's cash reserves to ensure compliance with the cash reserves requirement.

e. The licensee shall provide the commission with documentation including the amount of deposits in players' accounts and the amount in cash reserves as of the last day of each month. The information is due by the fifteenth day of the month for the preceding month.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6169C, IAB 2/9/22, effective 3/16/22]

491—14.11(99E) Annual audit. An audit of the fantasy sports contest operations for the licensee or parent company of the licensee shall be conducted by certified public accountants authorized to practice in the state of Iowa and provided to the commission within 180 days of the licensee's fiscal year and meet the following conditions:

14.11(1) Inclusion of an internal control letter, audited balance sheet, and audited profit-and-loss statement including a breakdown of expenditures and subsidiaries of fantasy sports contest activities.

14.11(2) Inclusion of a supplement schedule indicating financial activities on a calendar-year basis if the licensee's fiscal year does not correspond to the calendar year.

14.11(3) Report of any material errors, irregularities that may be discovered during the audit, or notice of any audit adjustments.

14.11(4) Availability, upon request, of an engagement letter for the audit between the licensee or parent company of the licensee and the auditing firm.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—14.12(99E) Abandoned accounts.

14.12(1) Abandoned player accounts under this rule are subject to Iowa Code chapter 556. Player accounts are considered abandoned if no activity by the account holder has occurred for three years. Player activity includes entering a contest, making an account deposit, or withdrawing funds.

14.12(2) No internet fantasy sports contest service provider shall charge an administration fee or maintenance fee for any inactive player account derived from state of Iowa residents at any time for any reason.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

491—14.13(99E) Problem gambling.

14.13(1) The licensee shall adopt and implement the following:

a. Policies and procedures designed to identify compulsive play.

b. Policies and procedures designed to comply with the process established by the commission pursuant to Iowa Code section 99F.4(22).

c. Policies and procedures designed to cooperate with the Iowa gambling treatment program in creating and establishing controls.

d. Policies and procedures designed to make information available to customers concerning assistance for compulsive play in Iowa, including websites or toll-free numbers directing customers to reputable resources containing further information, which shall be free of charge.

e. A process for players to easily impose limitations or notifications for deposits and monetary participation in a contest. Limitations must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours.

f. A process for players to easily self-exclude for a specified period of time and indefinitely. Self-exclusions must be applied automatically, take effect immediately, and be implemented as indicated by the player. No changes can be made to reduce the severity of the self-exclusion limitations for at least 24 hours. In the event of indefinite self-exclusion, the licensee must ensure that the player is paid in full for the player's account balance within a reasonable time provided that the licensee acknowledges that the funds have cleared. Players must be easily and obviously directed via a link to exclude themselves pursuant to Iowa Code section 99F.4(22). This control does not supersede the requirements set forth in Iowa Code section 99F.4(22).

g. A process to review and deactivate accounts of newly enrolled participants of the statewide self-exclusion program set forth in Iowa Code section 99F.4(22). The licensee must ensure that the player is paid in full for the player's account balance provided that the licensee acknowledges that the funds have cleared.

14.13(2) The licensee shall also include on the internet site or mobile application the statewide telephone number of the Iowa department of health and human services to provide problem gambling information and extensive responsible gaming features in addition to those described in Iowa Code section 99F.4(22).

14.13(3) Money forfeited by a voluntarily excluded person pursuant to Iowa Code section 99F.4(22) shall be withheld by the licensee and remitted to the general fund of the state by the licensee.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20; ARC 6169C, IAB 2/9/22, effective 3/16/22; Editorial change: IAC Supplement 11/1/23]

491—14.14(99E) Licensing of internet fantasy sports contest service providers.

14.14(1) Operation. The internet fantasy sports contest service provider shall submit the following for commission approval:

- a.* Internal controls for the operation of the account.
- b.* A detailed description and certification of systems and procedures used by the internet fantasy sports contest service provider to validate the identity, age and location of licensee account holders and to validate the legality of wagers accepted.
- c.* Certification of secure retention of all records related to internet fantasy sports contests and accounts for a period of not less than three years or such longer period as specified by the commission.
- d.* Certification of prompt commission access to all records relating to account holder identity, age and location in hard-copy or standard electronic format acceptable to the commission.
- e.* Verification that the player is not on the statewide voluntary self-exclusion list set forth in Iowa Code section 99F.4(22) prior to establishing an account.

14.14(2) Record keeping.

a. Record storage required. Internet fantasy sports contest service providers shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

- (1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.
- (2) All correspondence between the licensee and any of its customers who are applicants or licensees under Iowa Code chapter 99E.
- (3) Financial records of all transactions with players and all other licensees under these regulations.

b. Record retention. The records listed in paragraph 14.14(2) "a" shall be retained as required by 491—subrule 5.4(14).

14.14(3) Violation of laws or regulations. Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the

license, or fining the licensee, or any combination of the above. The commission has the discretion to suspend fantasy sports contest operations of its licensees by written order if necessary.

[ARC 4618C, IAB 8/28/19, effective 7/31/19; ARC 5016C, IAB 4/8/20, effective 5/13/20]

These rules are intended to implement Iowa Code chapters 99D, 99E and 99F.

[Filed Emergency ARC 4618C, IAB 8/28/19, effective 7/31/19]

[Filed ARC 5016C (Amended Notice ARC 4807C, IAB 12/18/19; Notice ARC 4617C, IAB 8/28/19),
IAB 4/8/20, effective 5/13/20]

[Filed ARC 5422C (Notice ARC 5269C, IAB 11/18/20), IAB 2/10/21, effective 3/17/21]

[Filed ARC 5423C (Notice ARC 5315C, IAB 12/16/20), IAB 2/10/21, effective 3/17/21]

[Filed ARC 6169C (Notice ARC 6056C, IAB 11/17/21), IAB 2/9/22, effective 3/16/22]

[Filed ARC 6895C (Notice ARC 6610C, IAB 11/2/22), IAB 2/22/23, effective 3/29/23]

[Editorial change: IAC Supplement 11/1/23]

[Filed ARC 7634C (Notice ARC 7070C, IAB 9/20/23), IAB 2/21/24, effective 3/27/24]