

## **CULTURAL AFFAIRS DEPARTMENT[221]**

[Created by 1986 Iowa Acts, chapter 1245, section 1301. Divisions under this “umbrella” include Arts Division[222], Historical Division [223], Library Division[224], and Public Broadcasting Division[225]]

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CHAPTER 1  
ORGANIZATION AND OPERATION

**221—1.1(303) Definitions.** The definitions of terms listed in Iowa Code section 17A.2 shall apply for these terms as they are used throughout this chapter. In addition, as used in this chapter:

“*Arts division*” means the arts division of the department of cultural affairs.

“*Department*” means the department of cultural affairs.

“*Director*” means the director of the department of cultural affairs.

“*Historical division*” means the historical division of the department of cultural affairs.

**221—1.2(303) Purpose.** The department of cultural affairs has primary responsibility for development of the state’s interest in the areas of the arts, history, and other cultural matters. In fulfilling this responsibility, the department is advised and assisted by the state historical board of trustees, and the Iowa arts council. The department performs the functions enumerated in Iowa Code section 303.1.

**221—1.3(303) Administrative services section.** The administrative services section performs the functions enumerated in Iowa Code section 303.2(1).

**221—1.4(303) Director’s duties.** The director performs duties as specified in Iowa Code section 303.1A.

**221—1.5(303) Divisions.**

**1.5(1) *Arts division.*** The arts division performs the duties enumerated in Iowa Code section 303.2(3) and may perform other functions assigned to it by law or rule.

**1.5(2) *Historical division.*** The historical division performs the duties enumerated in Iowa Code section 303.2(2) and may perform other functions assigned to it by law or rule.

**221—1.6(303) Administrative offices.** Correspondence and communications with the department and its divisions shall be directed as follows:

**1.6(1)** The department and its administrative services section may be reached as follows: Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319, telephone (515)281-7471, fax (515)242-6498.

**1.6(2)** The arts division may be reached as follows: Iowa Arts Council, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319, telephone (515)281-4451, fax (515)242-6498.

**1.6(3)** The historical division may be reached as follows: State Historical Society of Iowa, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319, telephone (515)281-5111, fax (515)242-6498.

These rules are intended to implement Iowa Code sections 303.1 to 303.2A.

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CHAPTER 2  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

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

**221—2.1(17A,22) Definitions.** As used in this chapter:

*“Agency.”* In lieu of the words “(official or body issuing these rules)”, insert “department of cultural affairs”.

**221—2.3(17A,22) Requests for access to records.**

**2.3(1) Location of record.** In lieu of the words “(insert agency head)”, insert “director, department of cultural affairs”. Also in lieu of the words “(insert agency name and address)”, insert “Director, Department of Cultural Affairs, New Historical Building, 600 East Locust Street, Des Moines, Iowa 50319”.

**2.3(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 a week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday except legal holidays”.

**2.3(7) Fees.**

*c. Supervisory fee.* In lieu of the words “(specify time period)”, insert “one-half hour”.

**221—2.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** In lieu of the words “(designate office)”, insert “director, department of cultural affairs”.

**221—2.9(17A,22) Disclosures without the consent of the subject.**

**2.9(1)** Open records are routinely disclosed without the consent of the subject.

**2.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 2.10(17A,22) or in any 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.

**221—2.10(17A,22) Routine use.**

**2.10(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.

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

*d.* 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.

*e.* 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.

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

#### **221—2.11(17A,22) Consensual disclosure of confidential records.**

**2.11(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 2.7(17A,22).

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

#### **221—2.12(17A,22) Release to subject.**

**2.12(1)** The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(17A,22). However, the agency need not release the following records to the subject:

*a.* The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

*b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

*c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

*d.* As otherwise authorized by law.

**2.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

#### **221—2.13(17A,22) Availability of records.**

**2.13(1)** *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**2.13(2)** *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

*a.* Records which are exempt from disclosure under Iowa Code section 22.7.

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

*c.* Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

*d.* Any other records made confidential by law.

**2.13(3) Authority to release confidential records.** The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 2.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

**221—2.14(17A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

**2.14(1) Personnel records.** These records concern departmental employees and their families, as well as applicants for employment with the department. The system contains material on health, dental, life, and long-term disability insurance; pay and benefit documents; tax withholding; position description questionnaires; affirmative action and equal employment opportunity; disciplinary information; grievances and appeals; performance planning and evaluation; training; deferred compensation; workers' compensation; payroll records; and other materials relating to the employees of the department. Some of the information may be confidential under Iowa Code section 22.7(11) and other legal provisions. These records contain names, social security numbers and other identifying numbers, and are collected in paper form and through the state's automated data processing system.

**2.14(2)** Reserved.

**221—2.15(17A,22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 2.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 2.13(17A,22). The records listed may contain information about individuals.

**2.15(1) Council, board, and commission records.** Agendas, minutes, and materials presented to the cultural affairs advisory council are available from the department of cultural affairs, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

**2.15(2) Administrative records.** This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

**2.15(3) Publications.** The office receives a number of books, periodicals, newsletters, government documents, annual reports and brochures related to its mission. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the library division.

**2.15(4) Office publications.** This office issues a variety of materials including promotional and grants brochures and pamphlets, press releases, project and annual reports, and newsletters which may contain information about individuals, staff or members of boards, councils, or commissions.

**2.15(5) Rule-making records.** Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection.

**2.15(6) Office manuals.** Information in office manuals may be confidential under Iowa Code section 17A.2(7) "f" or other applicable provision of law.

**2.15(7)** All other records that are not exempted from disclosure by law.

**221—2.16(17A,22) Data processing systems.** None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

**221—2.17(17A,22) Applicability.** This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 3  
DECLARATORY ORDERS

**221—3.1(17A) Petition for declaratory order.** Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department, at the Director’s Office, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions provided for by 221—3.7(17A).

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

**221—3.2(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to 3.6(17A) to whom notice is required by any provision of law. The department may also give notice to any other persons.

**221—3.3(17A) Intervention.**

**3.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**3.3(2)** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

**3.3(3)** A petition for intervention shall be filed at the director’s office. Such a petition is deemed filed when it is received by that office. The department will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for that purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

## DEPARTMENT OF CULTURAL AFFAIRS

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



PETITION FOR  
INTERVENTION

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The petition for intervention must provide the following information:

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

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

**221—3.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

**221—3.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319.

**221—3.6(17A) Service and filing of petitions and other papers.**

**3.6(1) When service required.** Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**3.6(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Administrative Offices, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319. All documents are considered filed upon receipt.

**221—3.7(17A) Consideration.** Upon request by petitioner, the department must schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

**221—3.8(17A) Action on petition.**

**3.8(1) Time frame for action.** Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

**3.8(2)** The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or the date of delivery if service is by other means unless another date is specified in the order.

**221—3.9(17A) Refusal to issue order.**

**3.9(1)** The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

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

**3.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

**3.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

**221—3.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

**221—3.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**221—3.12(17A) Effect of declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory ruling serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202, section 13.

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CHAPTER 4  
DEPARTMENT PROCEDURE FOR RULE MAKING

**221—4.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**221—4.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**221—4.3(17A) Public rule-making docket.**

**4.3(1) Docket maintained.** The department shall maintain a current public rule-making docket.

**4.3(2) Anticipated rule making.** The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the department. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the director for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the department of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

**4.3(3) Pending rule-making proceedings.** The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any determinations with respect thereto;
- h. Any known timetable for department decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The date of the rule’s filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

**221—4.4(17A) Notice of proposed rule making.**

**4.4(1) Contents.** At least 35 days before the adoption of a rule the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;

- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

**4.4(2) *Incorporation by reference.*** A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 4.12(2) of this chapter.

**4.4(3) *Copies of notices.*** Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the department a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the department for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

#### **221—4.5(17A) Public participation.**

**4.5(1) *Written comments.*** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Director, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

**4.5(2) *Oral proceedings.*** The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

**4.5(3) *Conduct of oral proceedings.***

a. *Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) “b” as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

b. *Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin.

c. *Presiding officer.* The department, a member of the department, or another person designated by the department who will be familiar with the substance of the proposed rule, shall preside at the oral

proceeding on a proposed rule. If the department does not preside, the presiding officer shall prepare a memorandum for consideration by the department summarizing the contents of the presentations made at the oral proceeding unless the department determines that such a memorandum is unnecessary because the department will personally listen to or read the entire transcript of the oral proceeding.

*d. Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the department decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the department.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

**4.5(4) Additional information.** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**4.5(5) Accessibility.** The department shall schedule oral proceedings in rooms accessible to and functional for persons with disabilities. Persons who have special requirements should contact: Director's Office, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319, telephone (515)281-7471, or fax (515)242-6498 in advance to arrange access or other needed services.

## **221—4.6(17A) Regulatory analysis.**

**4.6(1) Definition of small business.** A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

**4.6(2) Mailing list.** Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the director.

The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of a person authorized to transact business for the applicant;

*d.* A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

*e.* Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The department may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The department may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

**4.6(3) *Time of mailing.*** Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

**4.6(4) *Qualified requesters for regulatory analysis—economic impact.*** The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a) after a proper request from:

- a.* The administrative rules coordinator; or
- b.* The administrative rules review committee.

**4.6(5) *Qualified requesters for regulatory analysis—business impact.*** The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

- a.* The administrative rules review committee;
- b.* The administrative rules coordinator;
- c.* At least 25 or more persons who sign the request provided that each represents a different small business; or

*d.* An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

**4.6(6) *Time period for analysis.*** Upon receipt of a timely request for a regulatory analysis the department shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

**4.6(7) *Contents of request.*** A request for a regulatory analysis is made when it is mailed or delivered to the department. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

**4.6(8) *Contents of concise summary.*** The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

**4.6(9) *Publication of a concise summary.*** The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

**4.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(12a), unless a written request expressly waives one or more of the items listed in the section.

**4.6(11) *Regulatory analysis contents—substantial impact on small business.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).



**221—4.7(17A,25B) Fiscal impact statement.**

**4.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**4.7(2)** If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**221—4.8(17A) Time and manner of rule adoption.**

**4.8(1)** *Time of adoption.* The department shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of the oral proceedings thereon, the department shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**4.8(2)** *Consideration of public comment.* Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding, or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**4.8(3)** *Reliance on department expertise.* Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**221—4.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**4.9(1)** The department shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a.* The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c.* The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**4.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the department shall consider the following factors:

- a.* The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**4.9(3)** The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

**4.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**221—4.10(17A) Exemptions from public rule-making procedures.**

**4.10(1) *Omission of notice and comment.*** To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**4.10(2) *Categories exempt.*** The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

Rules that are mandated by federal law or regulations are exempted from the usual public notice and participation requirements in any situation where the department has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules. Notice and public participation would be unnecessary since the provisions of the law or regulation must be adopted in order to maintain federal funding and the department would have no option in the rule which was adopted.

**4.10(3) *Public proceedings on rules adopted without them.*** The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 4.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a department or agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 4.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 4.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**221—4.11(17A) Concise statement of reasons.**

**4.11(1) *General.*** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Director, Department of Cultural Affairs, 600 East Locust Street, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**4.11(2) *Contents.*** The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

**4.11(3) *Time of issuance.*** After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

**221—4.12(17A) Contents, style, and form of rule.**

**4.12(1) *Contents.*** Each rule adopted by the department shall contain the text of the rule and, in addition:

- a. The date the department adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exception provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include such reasons; and

g. The effective date of the rule.

**4.12(2) *Incorporation by reference.*** The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the department, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department.

If the department adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

**4.12(3) *References to materials not published in full.*** When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

**4.12(4) *Style and form.*** In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

#### **221—4.13(17A) Department rule-making record.**

**4.13(1) *Requirement.*** The department shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

**4.13(2) *Contents.*** The department rule-making record shall contain:

- a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of departmental submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;
- b. Copies of any portions of the department's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;
- c. All written petitions, requests, and submissions received by the department, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the department and considered by the director, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the department is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the department shall identify in the record the particular materials deleted and state the reasons for that deletion;
- d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;
- e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;
- f. A copy of the rule and any concise statement of reasons prepared for that rule;
- g. All petitions for amendment or repeal or suspension of the rule;
- h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;
- i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any department response to that objection;
- j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and
- k. A copy of any executive order concerning the rule.

**4.13(3) *Effect of record.*** Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

**4.13(4) *Maintenance of record.*** The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 4.13(2) "g," "h," "i," or "j."

**221—4.14(17A) *Filing of rules.*** The department shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

**221—4.15(17A) *Effectiveness of rules prior to publication.***

**4.15(1) *Grounds.*** The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**4.15(2) *Special notice.*** When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule to the rule’s indexing and publication. The term “all reasonable efforts” requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 4.15(2).

**221—4.16(17A) General statements of policy.**

**4.16(1) *Compilation, indexing, public inspection.*** The department shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10) “a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**4.16(2) *Enforcement of requirements.*** A general statement of policy subject to the requirements of this subsection shall not be relied on by the department to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 4.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

**221—4.17(17A) Review by department of rules.**

**4.17(1)** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**4.17(2)** In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the department’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

[Filed 4/28/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]



CHAPTER 5  
Reserved

CHAPTER 6  
IOWA COMMUNITY CULTURAL GRANTS (ICCG) PROGRAM  
Transferred to 261—Chapter 301, IAC Supplement 11/1/23





CHAPTER 7  
MUSEUM PROPERTY

**221—7.1(305B) Purpose.** The procedure for disposition of property held by museums within the state is implemented as provided by Iowa Code chapter 305B.

**221—7.2(305B) Forms.** Effective July 1, 1991, the following forms are provided pursuant to Iowa Code chapter 305B:

1. Notice of injury to or loss of property on loan;
2. Notice of conservation of loaned property;
3. Notice of intent to terminate a loan; and
4. Notice of intent to preserve an interest in property on loan.

Copies of the forms may be obtained from the Director, Department of Cultural Affairs, Capitol Complex, Des Moines, Iowa 50319; (515)281-6078. Inquiries may be addressed to the same location.

**221—7.3(305B) Title to undocumented property.** A museum may acquire title to undocumented property held for seven years or longer if no valid claim or contact is made by any person in accordance with Iowa Code sections 303B.7 and 303B.9 and 221—7.2(305B), Iowa Administrative Code. A museum may declare acquisition of legal title to undocumented property following the museum's completion of all notifications specified in Iowa Code sections 305B.3 to 305B.6, 305B.8 and 305B.9. The notification shall consist of a written notice to the last known contact, if a contact is known; posting of a notice of the proposed action in a publicly accessible place in the institution, and publication of a legal notice in a newspaper of record in the state with a 30-day waiting period. This notification must contain substantially the following information as provided by Iowa Code section 303B.9(3): "The records of (name of museum) fail to indicate the owner of record of certain property in its possession. The museum intends to acquire title to the below described property: (general description of the property). If you claim ownership or other legal interest in this property you must contact the institution, establish your ownership of the property pursuant to Iowa Code section 305B.8 and make arrangements to collect the property. If you fail to do so promptly, you will be considered to have waived any claim you may have had to the property."

**221—7.4(305B) Museum and lender obligations.** In order to take title pursuant to this chapter, a museum and a lender must comply with the provisions of Iowa Code sections 305B.10 to 305B.12.

FORM 1

NOTICE OF INJURY TO OR LOSS OF PROPERTY ON LOAN

Museum/Institution \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Date of Notice \_\_\_\_\_

Lender/Claimant \_\_\_\_\_  
Address (last known) \_\_\_\_\_  
Phone \_\_\_\_\_

In accordance with Iowa Code chapter 305B, the Museum Property Act, the above named institution hereby officially informs you of injury to or loss of the property on loan that is identified and described below.

Description of Property \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Institutional Identification of Loan \_\_\_\_\_  
Original Date of Loan \_\_\_\_\_ Term of Loan \_\_\_\_\_  
Condition of Property at Time Loan was Initiated \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description and Cause of Damage \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Action by Institution \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Action \_\_\_\_\_  
Signed for the Institution \_\_\_\_\_  
Type/print name and title \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Date \_\_\_\_\_

TO BE COMPLETED BY THE LENDER OR CLAIMANT: I acknowledge receipt of the "Notice of Injury or Loss of Property on Loan" for the property identified above.

Signature \_\_\_\_\_  
Type/print name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

RETURN TO INSTITUTIONAL CONTACT PERSON LISTED ABOVE.

Date completed form received by Museum \_\_\_\_\_  
Signature of person receiving returned form \_\_\_\_\_

FORM 2

NOTICE TO CONSERVE LOANED PROPERTY

Museum/Institution \_\_\_\_\_  
 Contact Person \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone \_\_\_\_\_ Date of Notice \_\_\_\_\_

Lender/Claimant \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone \_\_\_\_\_

In accordance with Iowa Code chapter 305B the above named institution hereby officially informs you of conservation activity that shall be undertaken on the property on loan that is identified and described below.

Description of property \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Institutional Identification of Loan \_\_\_\_\_  
 Original Date of Loan \_\_\_\_\_  
 Condition of Property at Time Loan was Initiated \_\_\_\_\_  
 \_\_\_\_\_

Conservation Action to be taken by the Institution \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date of Action \_\_\_\_\_  
 Signed for the Institution \_\_\_\_\_  
 Type/Print Name and Title \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Date \_\_\_\_\_

TO BE COMPLETED BY THE LENDER OR CLAIMANT: I acknowledge receipt of the "Notice to Conserve Loaned Property" for the property identified above.

Signature \_\_\_\_\_  
 Type/Print Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone \_\_\_\_\_

RETURN TO INSTITUTIONAL CONTACT PERSON LISTED ABOVE.

Date completed form received by Museum \_\_\_\_\_  
 Signature of person receiving return form \_\_\_\_\_

FORM 3

NOTICE OF INTENT TO TERMINATE A LOAN

Museum/Institution \_\_\_\_\_  
 Contact Person \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone \_\_\_\_\_ Date of Notice \_\_\_\_\_

Lender/Claimant \_\_\_\_\_  
 Address (last known) \_\_\_\_\_  
 \_\_\_\_\_  
 Phone \_\_\_\_\_

Museum Registration/Identification No(s) of Loan(s) \_\_\_\_\_  
 \_\_\_\_\_

Original Date of Loan \_\_\_\_\_  
 \_\_\_\_\_

Terms of Loan \_\_\_\_\_  
 \_\_\_\_\_

Description of Property \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The records of \_\_\_\_\_ (Museum name) indicate that you currently have the above property on loan to it. The institution wishes to terminate the loan. You must contact the institution, establish your ownership of the property pursuant to section 305B.8, and make arrangements to collect the property. If you fail to do so promptly, you will be considered to have donated the property to the institution. You must complete and return the enclosed "Notice of Intent to Preserve an Interest in Property on Loan" within one year from the date of this notice, and make arrangements to collect the property within that time period, or your interests will automatically be terminated, and this institution will acquire title to the property, according to the provisions of Iowa Code chapter 305B.

For the institution \_\_\_\_\_ Date \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ATTACHED: Notice of Intent to Preserve an Interest in Property on Loan.

FORM 4

NOTICE OF INTENT TO PRESERVE AN INTEREST IN PROPERTY ON LOAN

TO LENDER OR CLAIMANT - Iowa Code chapter 305B requires you to notify this institution promptly in writing of any change of address or ownership of property on loan to a museum. If the museum is unable to contact you regarding your loan, you may lose rights to loaned property. If you want to maintain your rights to the property identified below, complete and return this form. If you do not return this notice of intent within one year from the date of the notice, your interests automatically will be terminated; the museum will acquire title to the property.

Museum/Institution \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Date of Notice \_\_\_\_\_

Lender/Claimant \_\_\_\_\_  
Address (last known) \_\_\_\_\_  
Phone \_\_\_\_\_

Museum Registration/Identification No(s) of Loan \_\_\_\_\_  
\_\_\_\_\_

Description of Property (Attach an accurate, legible copy of the loan receipt, any materials documenting the loan, or provide a detailed description of the claimed property, including its general characteristics, identification number(s), and distinguishing characteristics.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Original Date of Loan \_\_\_\_\_  
Terms of Loan \_\_\_\_\_

\_\_\_\_\_

Interest in Property (If you are not the original lender, describe the origin and nature of your interest in the property. Attach copies of documents supporting your interest sufficient to establish ownership of the property.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO THE INSTITUTION — I hereby notify the above named institution that I claim an interest in the property described in the Notice of the Intent to Terminate a Loan (Form 3).

I understand that I must make arrangements with the institution to retrieve said property within one year of the date of this notice or title to the property shall revert to the institution.

I understand that I must promptly notify the institution in writing of any changes in address or ownership of the property.

I declare under penalty of perjury that to the best of my knowledge that the information contained in this notice is true.

Signed \_\_\_\_\_ Date \_\_\_\_\_  
Claimant

OR

I declare under penalty of perjury that I am authorized to act on behalf of the claimant. I am informed and believe the information contained in this notice to be true.

Signed \_\_\_\_\_ Date \_\_\_\_\_  
Claimant's representative

Please Type/Print

Name of claimant \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

Name of claimant's representative \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

----- Institutional Use -----

Notice Received by \_\_\_\_\_  
Date Received \_\_\_\_\_  
Receipt Returned by \_\_\_\_\_  
Date Returned \_\_\_\_\_

These rules are intended to implement Iowa Code section 303.1 and chapter 305B.  
[Filed 5/12/89, Notice 4/5/89—published 5/31/89, effective 7/5/89]  
[Filed 3/29/91, Notice 2/20/91—published 4/17/91, effective 5/22/91]

CHAPTER 8  
CULTURAL LEADERSHIP PARTNERS (CLP) PROGRAM  
Transferred to 261—Chapter 302, IAC Supplement 11/1/23

CHAPTER 9  
CULTURAL AND ENTERTAINMENT DISTRICTS  
Transferred to 261—Chapter 303, IAC Supplement 11/1/23

CHAPTER 10  
DESCRIPTION OF ORGANIZATION  
Rescinded IAB 10/2/91, effective 9/13/91

CHAPTER 11  
POLICIES AND PROCEDURES  
Rescinded IAB 10/2/91, effective 9/13/91

CHAPTER 12  
FORMS  
Rescinded IAB 10/2/91, effective 9/13/91





CHAPTER 13  
IOWA CULTURAL TRUST

**221—13.1(303) Program purpose.** The purpose of the Iowa cultural trust is to assist Iowa nonprofit arts, cultural and historical organizations in building stability and sustainability through the Iowa cultural trust fund.

[ARC 8087B, IAB 8/26/09, effective 9/30/09]

**221—13.2(303) Program description.** The cultural trust fund receives, preserves, invests, and expends moneys appropriated by the general assembly together with any other gifts, bequests, donations, or grants from federal or private sources directed to the fund's purposes.

[ARC 8087B, IAB 8/26/09, effective 9/30/09]

**221—13.3(303) Definitions.** The following definitions shall apply when used in this chapter unless otherwise noted:

“*Application*” means an official cultural trust grant application form as provided by the department.

“*Arts organization*” means an eligible organization with the arts as its primary mission and purpose. The organization must operate as an arts organization, including but not limited to an art museum, performing arts-producing organization, or community arts agency.

“*Board*” means the board of trustees of the Iowa cultural trust, as provided in Iowa Code section 303A.5.

“*Cash match*” means funds that are locally contributed for a cultural trust grant project. Matching funds shall be provided by the eligible applicant and shall not include any portion of another department of cultural affairs, Iowa arts council, or state historical society of Iowa grant.

“*Cultural organization*” means an eligible organization with culture, the sciences or humanities as its primary mission and purpose. The organization must operate as a cultural organization, including but not limited to a cultural center, civic arts-presenting venue, botanical center, science museum, children's museum, arboretum, or zoo.

“*Department*” means the Iowa department of cultural affairs (DCA).

“*Director*” means the director of the department of cultural affairs or the director's designee.

“*Endowment*” means a collection of funds, typically invested in long-term assets that produce income for an organization. Generally, the endowed asset is kept intact, and a portion of the income generated by it is used by the organization for operational costs.

“*Grantee*” means any applicant receiving grant funds under a cultural trust grant program.

“*Grant review panel*” means a group of at least three individuals with knowledge of cultural organizations, nonprofit best practices, and strategic planning who review grant applications according to the published criteria, with the responsibility to make funding recommendations to the board.

“*Historical organization*” means an eligible organization with history as its primary mission and purpose. The organization must operate as an historical organization, including but not limited to an historical museum, interpretive center, historical society, historical library or archival repository.

“*Trust fund credits*” means moneys raised by Iowa nonprofit arts, cultural and historical organizations to increase the amount of their endowments and other resources, as reported to the department.

[ARC 8087B, IAB 8/26/09, effective 9/30/09]

**221—13.4(303) Trust fund credits.**

**13.4(1)** Annually, the director shall certify to the state treasurer the trust fund credits gained by Iowa arts, cultural, and historical organizations in the previous year.

**13.4(2)** Criteria. In determining trust fund credits, the director shall:

*a.* Review reports from major arts, cultural, and historical organizations to determine the amount which has been given to their endowments in the previous year.

b. Review final reports from departmental grants to determine the amount of cash match contributed to granted projects in arts, cultural, and historical organizations. Cash match amounts indicate nonpublic support provided to organizations.

[ARC 8087B, IAB 8/26/09, effective 9/30/09]

## **221—13.5(303) Cultural trust grant programs.**

**13.5(1) *Grant program eligibility.*** Applicants may include any arts, cultural, or historical organization that is either an Iowa organization that is federally tax-exempt under United States Internal Revenue Code Section 501(c)(3) and incorporated under the Iowa nonprofit corporation Act or an Iowa organization that operates as an arts, cultural, or historical department or division of a municipal or county government (does not include public libraries, parks, or recreation departments). Additional eligibility criteria are as listed in published guidelines for individual grant programs.

**13.5(2) *Ineligible applicants.*** The following entities are not eligible to apply for cultural trust grants:

- a. Any individual.
- b. An entity of federal or state government.
- c. An organization applying through a fiscal agent.
- d. An organization with an outstanding late final report to the department or any of its divisions.
- e. A public (nonhistorical/cultural) library, park, or recreation center.
- f. A for-profit corporation or business.
- g. A religious organization, labor union, political party, or national service/professional organization.
- h. An educational institution, organization, or K-12 school, whose primary orientation, mission, and purpose is education and the awarding of academic credits.
- i. An organization that has already received funding for the same project from another department grant program.

**13.5(3) *Cultural trust stability grants.*** Stability grants support projects that will help Iowa cultural organizations reach goals of fiscal stability and institute best practices in organizational strategic planning and management.

- a. Applicants may request support for one or more of the following:
  - (1) Contractual costs for a consultant to advise on strategies to attain long-term financial stability and sustainability.
  - (2) Salary or contractual costs for a fundraising consultant or to support a fundraising staff position.
  - (3) Costs related to board or staff training in fundraising or endowment building or both.
  - (4) Costs related to a strategic planning process that includes development of strategies related to long-term financial stability and sustainability.
- b. General stability grant program policies.
  - (1) Applicants may request up to 50 percent of the project cost, to a maximum of \$2,500.
  - (2) All applications must show a dollar-for-dollar cash match.
  - (3) No organization may receive more than one stability grant in a single fiscal year.
  - (4) Applicants must have been incorporated in their community for a minimum of three years.
  - (5) Applicants must participate in training for nonprofit strategic planning and administrative best practices prior to applying for grant funding or receive a waiver of the training requirement from the department.

**13.5(4) *Cultural trust sustainability challenge grants.*** Sustainability challenge grants support projects that will help Iowa nonprofit cultural organizations strengthen their long-term financial sustainability through endowment building.

- a. *General sustainability grant policies.*
  - (1) Organizations with an operating budget up to \$150,000 may request up to \$20,000 in grant funds. Organizations with an operating budget over \$150,000 may request up to \$35,000 in grant funds.
  - (2) Organizations awarded sustainability challenge grants must raise a minimum of \$3 in new endowment funds raised specifically for the sustainability challenge grant campaign for every \$1 of grant funds awarded.

(3) An applicant must have, at the time of application, an established endowment fund for the support of organizational operating expenses. Sustainability challenge grant funds and all matching funds must be deposited into the endowment fund designated to support annual operating expenses of the grantee organization.

(4) An applicant must have at least one paid, part-time or full-time professional employee who is responsible for managing the business of the organization.

(5) An applicant must demonstrate that it is actively implementing a multiyear strategic plan that incorporates a fundraising plan with long-term sustainability as a clear, measurable goal.

(6) An applicant must certify and demonstrate that its operational practices are in alignment with the Iowa Principles and Practices for Charitable Nonprofit Excellence. Alignment may include any of the following:

1. The board of directors may pass a resolution adopting the Iowa Principles and Practices for Charitable Nonprofit Excellence as the standards for institutional operations.

2. An organizational representative may complete an Iowa Principles and Practices for Charitable Nonprofit Excellence training program which will result in a certificate of completion for a stated period.

3. An Iowa charitable nonprofit that is accredited by a national organization or licensed by a state agency will be presumed to have significantly complied with the Iowa Principles and Practices for Charitable Nonprofit Excellence.

(7) An applicant must have been incorporated in the community for a minimum of three years.

(8) Sustainability challenge grant funds will be paid to grantees after grantees demonstrate that they have achieved a 3:1 cash match but no later than two years and 90 days beyond the date of the award. Under no circumstances shall the total amount paid to the recipient exceed the grant award specified in the grant award letter.

(9) No organization may receive more than one sustainability challenge grant in a five-year period.

(10) Additional requirements may be indicated in guidelines published on the Iowa department of cultural affairs Web site.

*b. Specific requirements related to matching funds.*

(1) All matching gifts must be made (i.e., given, pledged, and pledges fulfilled) during the sustainability challenge grant period.

(2) Gifts eligible for matching must be made explicitly in response to the sustainability challenge grant.

(3) Donors must be aware that their gifts will be used to support the organization's general operating expenses and to match the sustainability challenge grant.

(4) Eligible types of gifts may include:

1. Cash.

2. Nonfederal and nonstate grants.

3. Special legislative appropriations from county or municipal governments and government organizations. This appropriation must represent a level of support above the normal appropriation for the recipient institution.

4. Net proceeds from special fundraising events or benefits held specifically to raise funds to match the sustainability challenge grant. Only the net proceeds are eligible; the intrinsic value of items donated for auction or sale is not eligible.

5. Membership contributions, "friends" or alumni giving, or similar campaigns. The value of any tangible items received by donors, such as magazines, newsletters, or gift "premiums" must be deducted from a membership contribution to assess the actual gift value. Membership forms or solicitation material should indicate that contributions will be used to match the sustainability challenge grant.

6. Marketable securities, valued as of the date of transfer from donor to grant recipient, if the securities are held in the endowment and are earning interest.

7. Real estate donated during the period of the sustainability challenge grant and converted into cash by means of sale before the end of the grant period. The value of the gift is equivalent to the net sale value.

8. Charitable gift annuity contracts that are signed during the period of the sustainability challenge grant. Annuities will be valued at the amount of the donor's charitable deduction.

(5) Ineligible gifts include:

1. Gifts deferred beyond the end of the grant period.
2. Bequests and other forms of planned giving that are not paid out or completed during the grant period except charitable gift annuities that are finalized within the grant period and meet the criteria outlined in 13.5(4) "b"(4).
3. Discounts on goods or services provided through contracts.
4. In-kind gifts or donated services.
5. Income from other endowed funds.
6. Gifts that derive from the grantee institution itself. For instance, the sale of land or assets already owned by an organization would not be eligible unless the land or asset was donated within the sustainability challenge grant period and in response to the sustainability challenge grant.

*c. Acknowledgment.*

(1) Organizations that receive a sustainability challenge grant must recognize the funds donated by the cultural trust and the matching funds raised to meet the grant requirements in either a separate listing or a named endowment fund for the lifetime of the organization.

(2) Organizations that receive a sustainability challenge grant must also acknowledge the cultural trust's support for the project in all related signage, program materials, promotion, publicity and advertising activities, and other printed and electronic forms of communication pertaining to the project.

*d. Obligations beyond the life of the contract.* Organizations that receive a sustainability challenge grant must return the grant funds to the cultural trust if the recipient closes, loses its nonprofit 501(c)(3) status, or goes out of business. The recipient may not donate these funds to another organization, individual, or company.

**13.5(5) Application procedures.** All cultural trust grant inquiries and correspondence, including the submission of completed application forms for consideration of funding, shall be addressed to the Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319. All applications shall be submitted according to the department's published guidelines.

**13.5(6) Review process.** All applications submitted shall be reviewed by a grant review panel, and the panel's recommendations for grantees and grant awards shall be submitted to the board. The board shall determine final grant awards to the extent funds are available.

**13.5(7) Review criteria.** Review criteria shall include, but not be limited to, the project's ability to enhance the future stability and sustainability of the eligible applicant. Additional review criteria are as listed in the published project guidelines.

**13.5(8) Grant deadline.** The department may establish one or more grant deadlines for the submission of cultural trust grant applications each year funds are available.

**13.5(9) Contractual agreement.** The department and each successful grantee shall enter into a contractual agreement prior to the expenditure of project-related funds. No grant or matching funds may be obligated or expended for the project prior to the execution of the contractual agreement by the department and the grantee. A grantee must expend all awarded funds within the time frame named in the contractual agreement.

**13.5(10) Auditing requirements.** The department reserves the right to request an audit of the expenditures of any cultural trust-funded project at the expense of the grantee.

**13.5(11) Informal appeals.**

*a.* An informal appeals process shall be made available only to applicants whose applications were declined on procedural impropriety or error as evidenced by one or more of the following reasons:

- (1) Application declined on the basis of review criteria other than those appearing in rule or relevant guidelines;
- (2) Application declined based on influence of the review panel willfully failing to disclose conflicts of interest;

(3) Application declined based upon highly erroneous information provided by staff or advisory committee members at the time of the review despite the fact that the applicant provided the department with accurate and complete information on regulation forms as part of the standard application process.

*b.* Incomplete or ineligible applications, or applications failing to meet the application deadline, are specifically denied any appeals process.

*c.* All requests for appeals shall be made in writing and shall be hand-delivered, E-mailed, or bear a U.S. Postal Service postmark within 30 days of notification of the decision. The director shall consider and rule on the appeal and will notify the appellant in writing of the decision within 30 days from the receipt of the appeal. The decision of the director is final except as provided for in Iowa Code sections 17A.19 and 17A.20.

[ARC 8087B, IAB 8/26/09, effective 9/30/09; ARC 8956B, IAB 7/28/10, effective 9/1/10; ARC 9081B, IAB 9/22/10, effective 9/1/10]

These rules are intended to implement Iowa Code section 303.1A(6) and chapter 303A.

[Filed ARC 8087B (Notice ARC 7925B, IAB 7/1/09), IAB 8/26/09, effective 9/30/09]

[Filed ARC 8956B (Notice ARC 8811B, IAB 6/2/10), IAB 7/28/10, effective 9/1/10]

[Filed Emergency ARC 9081B, IAB 9/22/10, effective 9/1/10]