

TREASURER OF STATE[781]

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CHAPTER 1
ORGANIZATION AND PROCEDURES

781—1.1(17A) Treasurer of state. The treasurer of state is a constitutional officer of the state of Iowa, as provided by Article IV, Section 22 of the Constitution of Iowa, as amended in 1972. The treasurer of state is elected by the electorate of Iowa as provided by Article IV, Section 22 of the Constitution of Iowa.

781—1.2(17A) Duties of treasurer. Iowa Code chapter 12 prescribes the rights, duties and responsibilities of the treasurer.

781—1.3(17A) Location of office. The offices of the treasurer of state are located at Des Moines, Iowa 50319 at the seat of government. The office of the treasurer of state is available to the public during office hours 8:00 a.m. to 4:30 p.m., Monday through Friday or in case of necessity by appointment.

These rules are intended to implement Iowa Code chapter 12 and section 17A.3.

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[781—Ch 2 renumbered as 781—Ch 9, IAB 5/18/88, effective 6/22/88]

The treasurer of state 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.

781—2.1(17A,22) Definitions.

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

781—2.3(17A,22) Requests for access to records.

2.3(1) Location of record. In lieu of the words “(insert agency name and address),” insert “Department of Treasurer of State, State Capitol Building, Des Moines, Iowa 50319.” In lieu of words “(agency name),” insert “department”.

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 per week, insert hours specified in Iowa Code section 22.4),” insert “8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays.”

2.3(7) Fees.

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

781—2.6(17A,22) Procedure by which a subject may have additions, dissents, or objections entered into the record. In lieu of the words “(designate office)”, insert “to the director’s office”.

781—2.9(17A,22) Disclosures without 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 the notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.
- e.* To the legislative 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.

781—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, state and local 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.

781—2.11(17A,22) Consensual disclosure of confidential records.

2.11(1) *Consent to disclose 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 involved 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.

781—2.12(17A,22) Release to the 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 the 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 provided by the 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 correct confidential information relating to another subject.

781—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. Sealed bids received prior to selection for professional services. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

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

d. Second injury fund records which represent and constitute the work of an attorney, which are related to litigation or claim made by or against the fund. (Iowa Code section 22.7(4))

e. Records of unclaimed property examinations during the period of examination pursuant to the treasurer's authority to examine holders. (Iowa Code section 556.23)

f. Records of identity of owners of public bonds or obligations maintained as provided in Iowa Code section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public

bonds or obligations and a state or federal agency shall have the right of access to the records. (Iowa Code section 22.7(17))

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

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

i. Those portions of 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)

j. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

k. 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).

781—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). Unless otherwise stated, the authority for this office to maintain the record is provided by Iowa Code chapter 12 and statutes governing the subject matter of the record. 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 another record system. The record systems maintained by the agency are:

2.14(1) Unclaimed property—missing owner records. Records containing lists of names, addresses, city, and ZIP codes of persons who have abandoned cash, stock or safe deposit contents. The list contains the amount abandoned and the date such was reported to the treasurer. These records are available for viewing on microfiche in the treasurer’s office and on printouts at state and county fairs statewide. This personally identifiable information is collected under the authority of Iowa Code chapter 556 and is maintained on paper, microfiche, and an automated data processing system.

2.14(2) Unclaimed property-holder reports. These annual reports are filed by financial institutions, insurance companies, and corporations. The original report is filed by name and is available on paper only. These records are collected under the authority of Iowa Code chapter 556.

2.14(3) Pledging of public funds. Records containing the name of federally insured bank, bank office, or credit union approved by the treasurer of state to accept the deposits of public funds in excess of federal insurance. Also included are the approved custodians which act as a safekeeping agent for the treasurer of state in holding collateral pledged by a depository to secure deposits of public funds. These records contain personally identifiable information collected under the authority of Iowa Code chapter 453. The information is maintained on paper.

2.14(4) Linked deposit programs. Records containing linked deposits made by the treasurer of state under the horticulture and alternative crop program or the targeted small business program including

information regarding the nature, terms, and amounts of the loans upon which the linked deposits were based and the names of the eligible borrowers to which the loans were made. The records include signed applications, agreements, correspondence, and program reports. These records contain personally identifiable information on the borrower and the lender, collected under the authority of Iowa Code section 12.43. The information is maintained on paper and on a word processor.

2.14(5) *Records of disclosure of information from persons or financial institutions regarding their open-end credit, credit cards, and financial services.* These records contain personally identifiable information, collected under the authority of Iowa Code section 12.27. The information on credit cards is kept on paper and in an automated data processing system. The financial services and open-end credit information is maintained on paper only. These records are filed by names of institutions or persons reporting.

2.14(6) *Request for proposal (RFP).* Records of solicitations to vendors to submit proposals for providing professional services. These records may contain personally identifiable information, collected under the authority of Iowa Code sections 12.30, 97A.7, and 602.9111. The information is maintained on paper and filed by vendor's name. Sealed bids received prior to selection will be confidential under the authority of Iowa Code section 72.3. Also to be considered by the treasurer of state are requests from vendors who have submitted business information, desiring to have all or part of that information treated as confidential.

2.14(7) *Report on state and local government bonding activities.* Records of information regarding outstanding obligations. These records contain personally identifiable information collected under the authority of Iowa Code section 12.30. The information is filed by the name of political subdivisions, instrumentalities, agencies, and authorities of the state and is maintained on paper and in an automated data processing system.

2.14(8) *South Africa-related investments and deposits.* Records include a list of companies that do business in or with the Republic of South Africa maintained for the purpose of which state funds and funds administered by the state shall not be invested or deposited in financial institutions or companies making loans or doing business with or in the Republic of South Africa. These records contain personally identifiable information, collected under the authority of Iowa Code sections 12A.1 through 12A.5. The information is maintained on paper and a word processing system, filed by company name. The list is developed with reference to information obtained from the United States Department of Commerce and Arthur D. Little, Inc., and other authoritative sources.

2.14(9) *Personnel files.* These files contain information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biological information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports; table of authorized positions, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

2.14(10) *Second injury fund records.* Second injury fund records setting forth the balance, income, source of income, and payments out of the fund. Records include copies of notices of petition, industrial commissioner rulings, appeals filed, and appeal decisions all filed by claimant name. These records contain personally identifiable information, collected under the authority of Iowa Code sections 85.63 through 85.69. The information is maintained on paper and certain parts are included on a word processing system. Records which represent and constitute the work of an attorney, which are related to litigation or claim made by or against the fund are considered confidential under the authority of Iowa Code section 22.7(4). All final orders are open to the public.

2.14(11) *Iowa centennial memorial scholarship.* Records on persons applying for and receiving scholarships from the Iowa centennial memorial foundation. These records include applications, letters of recommendation, grade transcripts, statements of expenses and awards, and essays. The records contain personally identifiable information, collected under the authority of Iowa Code section 504.32. The information is maintained on paper only.

2.14(12) Clerk of court reports. Records of filing fees and court costs reported and remitted monthly by the clerk of court to the treasurer of state. These records may contain personally identifiable information, collected under the authority of Iowa Code sections 602.8105, 602.8106, and 602.8108. The information is maintained on paper only and is filed by county name.

2.14(13) Forgery files. Records concerning repayment for a forged state warrant investigated by the department of inspections and appeals. These records may include photocopies of forged warrants, correspondence, and copies of transmittal receipts to show repayment. These records are filed by claimant's name. This information, collected under the authority of Iowa Code section 12.3, is maintained on paper only.

2.14(14) Financial reports. Financial reports of distributions to cities and counties of the dollar amounts distributed from road use tax, liquor tax, franchise tax, hotel-motel tax, local sales and services tax and flood control. These records may contain personally identifiable information and are filed by county or city name or by a code number. Road use tax information is collected under the authority of Iowa Code chapter 312, liquor tax under Iowa Code section 125.59, franchise tax under Iowa Code section 422.64, hotel-motel tax under Iowa Code section 422A.2, local sales and services under Iowa Code sections 422B.8 through 422B.10, and flood control under federal Code 33 USC 701c 3. These records are maintained on paper and in an automated data processing system.

2.14(15) Records of redeemed warrants filed by warrant number. Locating information is maintained so photocopies of warrants may be made when deemed necessary. These records are collected under the authority of Iowa Code section 12.3. These records are maintained on paper and an automated data processing system and filed by warrant number. Locating information is kept on microfiche. Microfilmed warrants which may contain personally identifiable information, such as to whom the warrant was issued, are kept at the state records center.

2.14(16) Records of invest-in-Iowa program. Records of Iowa banks, savings and loans, and credit unions which have certificates of deposit from the treasurer of state. These records contain personally identifiable information, collected under the authority of Iowa Code section 12.8. These records are maintained on paper and on a word processing system, filed by institution name.

2.14(17) Bank records. Records of bank statements on the general operating accounts, filed by bank name and date. These records contain personally identifiable information, collected under the authority of Iowa Code section 12.10. The records are maintained on paper only.

2.14(18) Loan agreements. Records of agreements executed with brokers in order for borrowing of securities, filed by broker name. These records contain personally identifiable information, collected under the authority of Iowa Code section 12.8. The records are maintained on paper only.

2.14(19) Receipts transmittal letters of moneys deposited by state agencies. These records are filed by agency name and by date, collected under the authority of Iowa Code section 12.10. These records are maintained on paper and on an automated data processing system.

2.14(20) Public bonds and obligations. Records of identity of owners of public bonds or obligations maintained as provided in Iowa Code section 76.10 or by the issuer of the public bonds or obligations. These records contain personally identifiable information, collected under the authority of Iowa Code sections 76.10 and 12.26 through 12.30. These records are confidential under Iowa Code section 22.7(17). However, the issuer of the bonds or a state or federal agency may obtain information as necessary under Iowa Code section 76.11.

2.14(21) Missing shareholders of liquidated corporation file. This file is a listing of last known name, address, city, ZIP code, and dollar amount owed for persons who are entitled to proceeds from closed corporations. The file lists names collected for the past 20 years. After 20 years, ownership reverts to the state and the file is abolished. The file is maintained on a word processor and is available on paper for review by appointment made with the unclaimed property division in the Hoover Building. The file is collected under Iowa Code section 496.101. This information is not maintained in an automated data processing system.

781—2.15(17A,22) Other groups of records routinely available for public inspection. 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). In addition, the records may contain information about the individuals. Unless otherwise designated, the authority for this office to maintain the record is provided by Iowa Code chapter 12 and the statutes governing the subject matter of the record. All records are stored both on paper and in automated data processing systems unless otherwise noted.

2.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

2.15(2) Council and commission records. Agendas, minutes, and materials presented to the Iowa centennial memorial foundation and rates set by the state rate setting committee are available from the office of treasurer of state, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 2.15 or 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 retrieved by individual identifier and is not stored on an automated data processing system.

2.15(3) Publications. News releases, annual reports, project reports, agency newsletters, official statements, etc., are available from the office of the treasurer of state. Brochures describing various agency programs are available at the office of treasurer of state. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

2.15(4) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public.

2.15(5) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

2.15(6) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available from the office of treasurer of state. Policy manuals do not contain information about individuals.

2.15(7) Administrative records. This includes documents concerning budget, property, inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

2.15(8) Other records. All other records that are not exempted from disclosure by law.

781—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 as described in 2.14(17A,22).

781—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 rules of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administration 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 or

constitutional principles, statues, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

[Filed 4/28/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]

CHAPTER 3
DEPOSIT AND SECURITY OF PUBLIC FUNDS IN SAVINGS AND LOANS

781—3.1(12C) Scope and transition.

3.1(1) Iowa Code chapter 12C authorizes the treasurer of state to establish administrative rules and procedures to secure deposits of public funds in banks, savings and loans and credit unions. This chapter contains rules applicable to securing deposits of public funds in savings and loans. Rules applicable to securing public funds in credit unions are contained in 781—Chapter 14, and rules applicable to securing public funds in banks are contained in 781—Chapter 13.

3.1(2) Public units and savings and loans shall have until June 30, 1993, to convert existing security and custodial agreements to Form 655-0205.

781—3.2(12C) Definitions. As used in this chapter:

“Approved custodian” means the Federal Home Loan Bank of Des Moines, Iowa.

“Eligible collateral” means any of the securities specified in Iowa Code section 12C.16(1) *“b”* provided that the securities are acceptable to the public unit and to the approved custodian.

“Federal Home Loan Bank” means the Federal Home Loan Bank of which the savings and loan is a member.

“Letter of credit” means an irrevocable, nontransferable, standby letter of credit (Form 655-0198) issued directly to the public unit by the Federal Home Loan Bank.

“Market value” means the value of a pledged security calculated by using the average of the closing bid and ask price from a nationally recognized pricing source including, but not limited to, the Wall Street Journal, Bloomberg Financial Markets, Telerate, Reuter’s, or a nationally recognized broker dealer.

“Pledged collateral” or *“pledged securities”* means eligible collateral pledged by a savings and loan to a public unit to secure uninsured public deposits.

“Public units” means the public bodies mentioned in Iowa Code sections 12C.1(1) and 12C.1(2) *“b”* and including, but not limited to, the following entities:

1. Cities.
2. Transit authorities.
3. Municipal utilities, including jointly owned.
4. Public libraries, city and regional.
5. Municipal housing programs.
6. Solid waste agencies.
7. Waterworks.
8. City cemeteries.
9. County offices including treasurers, recorders, clerks of court, sheriffs and auditors.
10. Townships.
11. County fair boards.
12. Regional planning agencies.
13. County care facilities.
14. County hospitals.
15. County conservation boards.
16. Sanitary districts.
17. Treasurer of state.
18. Alcoholic beverages division.
19. Iowa department of transportation.
20. Judicial district department of correctional services.
21. Iowa finance authority.
22. Iowa family farm development authority.
23. Iowa railway finance authority.
24. State board of regents.
25. State fair board.

26. State commerce commission.
27. State racing commission.
28. Iowa college student aid commission.
29. Iowa higher education loan authority.
30. School districts.
31. Area education agencies.
32. Community action programs.
33. Community colleges.

Federal agencies, or political subdivisions thereof, are not public units under this chapter.

“Savings and loan” means a savings and loan as defined in Iowa Code section 12C.1(2) *“d.”*

“Treasurer” means the treasurer of the state of Iowa.

“Uninsured public funds” or *“uninsured public deposits”* means the funds of a public unit deposited in a savings and loan which are not federally insured, together with any accrued interest thereon.

781—3.3(12C) Forms. The following forms shall be utilized by savings and loans in connection with the operation of this chapter:

1. (Form 655-0198) Letter of Credit.
2. (Form 655-0204) Deposit Agreement.
3. (Form 655-0205) Security and Custodial Agreement for the Deposit of Public Funds in Savings and Loans.
4. (Form 655-0206) Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities.
5. (Form 655-0207) Joint Receipt of Custody.

781—3.4(12C) Methods of securing uninsured public deposits in savings and loans. Uninsured public deposits in a savings and loan shall be secured by either a letter of credit (Form 655-0198) or by the pledge of eligible collateral to the public unit pursuant to the requirements of this chapter.

781—3.5(12C) Securing uninsured public deposits in savings and loans using a letter of credit.

3.5(1) A savings and loan may secure an uninsured public deposit with a letter of credit as defined in these rules and Iowa Code section 12C.16.

3.5(2) The public unit shall have in its possession prior to or simultaneously with the deposit of uninsured public funds in a savings and loan, a deposit agreement (Form 655-0204) and a letter of credit (Form 655-0198) issued by the Federal Home Loan Bank to the public unit in an amount not less than 110 percent of the amount of public funds to be secured thereby.

3.5(3) If the letter of credit secures a demand deposit, the expiration date shall be determined by the public unit and the savings and loan; however, uninsured public funds shall be secured at all times.

3.5(4) The public unit shall keep the letter of credit in a vault or a safe deposit box in a financial institution other than the savings and loan in which the deposit was made, until such time as the letter of credit expires or is presented for payment to the Federal Home Loan Bank.

3.5(5) If the letter of credit secures a time deposit, the letter of credit shall have an expiration date which is at least ten business days later than the maturity date of the time deposit. In the event that the public unit decides to extend the maturity of its time deposit after the issuance of the letter of credit, the public unit shall obtain a new letter of credit from the Federal Home Loan Bank that takes into account the extended maturity date of the time deposit. The new letter of credit shall be obtained by the public unit prior to the maturity date of the original time deposit.

781—3.6(12C) Securing public funds in a savings and loan with a pledge of eligible collateral.

3.6(1) Prior to accepting an uninsured public deposit, a savings and loan shall secure the uninsured public deposit in accordance with Iowa Code chapter 12C and these rules. The savings and loan must:

- a.* Enter into a Security and Custodial Agreement for the Deposit of Public Funds in Savings and Loans (Form 655-0205) with the public unit and the approved custodian.

- b. Enter into a deposit agreement (Form 655-0204) with the public unit.
- c. Deliver to the approved custodian eligible collateral with a market value of not less than 110 percent of the uninsured public deposits.

3.6(2) A savings and loan shall grant a security interest to the public unit in all pledged securities to secure the uninsured public funds of that public unit. The savings and loan shall take all steps necessary to ensure that the public unit has a valid, perfected, enforceable, first priority security interest in the pledged collateral. The savings and loan shall enter into a security agreement (Form 655-0205) with the public unit and the approved custodian, and shall transfer pledged collateral to the approved custodian which shall hold the pledged collateral in safekeeping for the public unit.

3.6(3) The savings and loan shall maintain eligible collateral with the approved custodian with a total market value of not less than 110 percent of a public unit's total deposits which are not otherwise secured by a letter of credit.

3.6(4) A savings and loan shall promptly forward to the approved custodian payment for fees associated with the approved custodian's services as safekeeping agent for the public unit upon receipt of a statement from the approved custodian.

3.6(5) A savings and loan shall not attempt to withdraw pledged collateral from the approved custodian if such action will cause the total market value of pledged collateral to fall below 110 percent of a public unit's total uninsured deposits which are not otherwise secured by a letter of credit.

3.6(6) A savings and loan shall promptly notify the public unit and the approved custodian, in writing, of any change in its name or home office location.

3.6(7) A savings and loan shall receive written approval from the public unit for the withdrawal or substitution of any pledged collateral by completing the Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities (Form 655-0206) and delivering it to the public unit with the request for the public unit's written approval to withdraw or substitute pledged securities. The public unit, if it approves of the withdrawal or substitution of pledged securities, shall forward the completed form to the approved custodian.

3.6(8) Any request by a savings and loan to withdraw pledged securities or to substitute securities which will result in a total market value of less than 110 percent of the public unit's public deposits, which are not otherwise secured by a letter of credit, shall be denied by the public unit.

3.6(9) The approved custodian shall comply with a savings and loan's request for the withdrawal, substitution or addition of pledged collateral when it receives a completed Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities (Form 655-0206) containing the authorized signatures of the public unit and the savings and loan.

3.6(10) The approved custodian will issue a Joint Receipt of Custody (Form 655-0207) to the public unit and to the savings and loan evidencing the pledge of any securities under the security agreement between the public unit and the savings and loan. In the event of substitution or exchange of securities, the approved custodian shall forward by mail to the public unit a Joint Receipt of Custody (Form 655-0207).

3.6(11) If a pledged security matures, then the principal amount of the cash must be held in trust by the approved custodian for the public unit until the public unit has determined that releasing the cash will not cause the total market value of all pledged securities by the savings and loan to fall below the 110 percent requirement.

3.6(12) The securities used to secure the uninsured public deposits in savings and loans shall be acceptable to the public unit and the approved custodian and shall be one or more of those securities specified in rule 3.2(12C) of this chapter under the definition of "eligible collateral."

3.6(13) The public unit or the approved custodian has the right to refuse any security offered as collateral, notwithstanding its inclusion in Iowa Code section 12C.16(1)"b" or these rules, for reasons relating to difficulty of valuation, uncertainty as to the ability to sell a security in the event of default, questions as to ownership, or impossibility of creating a valid and perfected security interest in favor of the public unit.

3.6(14) The acceptance of a security as collateral by the approved custodian or the public unit does not prevent the public unit from requiring substitution of said security at a later time as a result of statutory

or regulatory amendment or other changes which affect the valuation, marketability, liquidity, ownership, or perfectibility of the security or the enforceability of the public unit's security interest.

3.6(15) Securities which are issued in certificated or definitive form are eligible collateral only if they are registered in the name of the public unit's approved custodian, or are in otherwise negotiable form acceptable to the public unit.

3.6(16) No security which requires any additional endorsement, assignment or power of attorney for liquidation is eligible collateral.

781—3.7(12C) Duties of the approved custodian.

3.7(1) An approved custodian shall enter into a Security and Custodial Agreement for the Deposit of Public Funds in Savings and Loans (Form 655-0205) with the public unit and the savings and loan.

3.7(2) An approved custodian shall accept only collateral which is eligible to be pledged under these rules.

3.7(3) An approved custodian shall segregate all collateral, maintaining open, notorious, continuous, active and exclusive possession of the collateral for the benefit of the public unit.

3.7(4) An approved custodian shall permit the withdrawal or substitution or addition of pledged securities only upon receipt of a Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities (Form 655-0206), which contains the signatures of authorized persons representing the savings and loan and the public unit. Receipt of the authorization by facsimile transmission shall be adequate documentation to allow the approved custodian to release or accept pledged securities. The approved custodian shall implement procedures for documenting signatures of authorized persons of a savings and loan and the public unit.

3.7(5) An approved custodian shall issue a Joint Receipt of Custody (Form 655-0207) to the public unit and the savings and loan each time that a savings and loan substitutes new securities for pledged securities or a savings and loan pledges additional pledged securities.

3.7(6) An approved custodian shall establish a fee schedule for its services. Any and all such fees shall be the responsibility of, and be paid by, the respective savings and loan.

3.7(7) In the event that the public unit notifies an approved custodian of the default of a savings and loan, it shall thereafter act only upon the public unit's instructions with regard to any pledged securities.

3.7(8) An approved custodian shall, no later than the twentieth day of each month, provide a written report to those public units for which it serves as approved custodian. The following items shall be provided in the report:

a. The name of the savings and loan which has pledged securities to secure the uninsured public funds of the public unit.

b. An inventory of all pledged securities as of the last day of the preceding month which provides a description of the pledged securities and the par amount, maturity date, and market value of each.

c. The total par value and market value of all pledged securities as of the last day of the preceding month.

3.7(9) An approved custodian shall determine the market values of pledged securities as of the last day of the month for purposes of reporting to the public unit.

781—3.8(12C) Termination of savings and loan's federal insurance. In the event that a savings and loan's applicable federal deposit insurance is suspended or terminated, the savings and loan must notify the public unit immediately and shall immediately return all deposits to the public unit with accrued interest.

781—3.9(12C) Sale or merger of a savings and loan. The responsibility of a savings and loan to secure uninsured public deposits shall not be altered by any merger, takeover or acquisition, except to the extent that such duty is assumed by the successor entity. A savings and loan shall immediately notify the public unit in writing of its merger, takeover or acquisition by a successor entity.

781—3.10(12C) Prohibition on ownership or control. The approved custodian shall not be owned or controlled directly or indirectly by a savings and loan pledging securities to collateralize public funds.

781—3.11(12C) Procedures upon default.

3.11(1) The acceptance of public funds deposits by a savings and loan constitutes consent by the savings and loan to assessments by the treasurer to cover losses of public funds in other savings and loans in accordance with Iowa Code section 12C.23 and the rules contained in this chapter.

3.11(2) Upon notification from a public unit that a public unit has not been completely repaid its principal and interest for a deposit, and upon notification that such principal and interest is not available from a letter of credit or pledged securities securing such deposit, the treasurer shall assess all savings and loans in the state with public deposits as provided in Iowa Code section 12C.23.

3.11(3) A savings and loan and any security given for the public funds in its possession are liable for payment if the savings and loan fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order or certificates of deposit, or any public funds entrusted to it if in failing to pay the savings and loan acts contrary to the terms of an agreement between the savings and loan and the public body treasurer or, if the savings and loan fails to pay an assessment, by the treasurer of state when due.

These rules are intended to implement Iowa Code chapter 12C.

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[Filed emergency 5/20/93—published 6/9/93, effective 5/25/93]

CHAPTER 4
LINKED INVESTMENTS FOR TOMORROW (LIFT)

781—4.1(12) Definitions. The definitions found in Iowa Code section 12.32 as amended by 2006 Iowa Acts, House File 2661, are adopted by reference. In addition, the following definitions apply:

“*Borrower*” means a person, corporation, cooperative, partnership, or municipality located in Iowa that is qualified to participate in the linked investments for tomorrow program.

“*Current market rate*” means the one-year Treasury bill rate.

“*Lender*” means “eligible lending institution” as defined in Iowa Code section 12.32 and includes banks, savings and loans, converted savings banks, and credit unions that are located in Iowa and are in compliance with Iowa Code chapter 12C.

“*Treasurer*” means treasurer of the state of Iowa and members of staff carrying out duties delegated by the treasurer.

781—4.2(12) Forms. The following forms are used in this program:

LIFT Lender/Borrower Application (Form 655-0142)

LIFT Renewal Application (655-0143)

LIFT Master Agreement (Form 655-0144)

781—4.3(12) Procedures for submitting and processing a linked investment loan application.

4.3(1) To participate in the linked investments for tomorrow program, a lender’s home office must complete and submit a LIFT Master Agreement (Form 655-0144) to the treasurer.

By filing Form 655-0144 with the treasurer, a home office agrees that it and all its branches, when participating in the LIFT program, shall comply with the following:

- a. Iowa Code sections 12.31 through 12.43 as amended by 2006 Iowa Acts, House File 2661 (Linked Investments for Tomorrow Act),
- b. Iowa Code chapter 12C (Deposit of Public Funds), and
- c. Iowa Administrative Code 781—Chapters 3, 4, 13, and 14.

4.3(2) Any lender whose home office is in compliance with subrule 4.3(1) may submit a LIFT Lender/Borrower Application (Form 655-0142) to the treasurer.

4.3(3) The lender shall submit applications only for those borrowers and businesses which the lender believes are eligible.

4.3(4) Forms and correspondence relating to the linked investments for tomorrow program shall be mailed to:

Treasurer of State
LIFT Administration
State Capitol Building
Room 114
Des Moines, Iowa 50319

4.3(5) Upon receipt of a LIFT Lender/Borrower Application (Form 655-0142), the treasurer will determine whether the application meets the requirements of the LIFT program and whether sufficient funds will be available for the investment.

4.3(6) Within a reasonable time, the treasurer will notify the lender whether the application has been approved or denied.

4.3(7) Funds will be deposited with the lender on the fifteenth day of the month. If the fifteenth day of the month falls on a weekend or holiday, funds will be transferred the following business day.

4.3(8) The lender must make all funds available to the borrower by the end of the business day following the day the lender receives the funds from the treasurer.

4.3(9) At the beginning of each month, the treasurer will determine the rate of interest for LIFT certificates of deposit that are new or are being renewed that month.

4.3(10) After approval of the application, the lender shall notify the treasurer, in writing, if the loan is paid off, if the loan is in default, if the business closes, or if the business is sold.

4.3(11) At any time it is determined that a borrower or business does not meet the requirements of participation in the LIFT program, the treasurer shall notify the lender and withdraw the certificate of deposit with no penalty. The lender shall have ten days from the date of notification to remit the outstanding balance and accrued interest to the treasurer.

4.3(12) As a requirement for renewal of the certificate of deposit, the lender shall verify that the borrower and business are still eligible for this program.

781—4.4(12) Qualifications on the certificate of deposit.

4.4(1) The minimum rate for the certificate of deposit shall be 1 percent. The term shall not exceed one year but may be renewed at the option of the treasurer.

4.4(2) Interest must be calculated for the actual number of days on a 365-day basis, except during leap year, when it must be calculated for the actual number of days on a 366-day basis. Interest must be paid to the treasurer upon maturity of the certificate of deposit.

4.4(3) The certificate of deposit and accrued interest must be secured either by federal deposit insurance or must be collateralized pursuant to Iowa Code chapter 12C.

4.4(4) If the borrower pays the loan in full prior to the maturity date of the certificate of deposit, the lender shall, within ten days of the payment in full, remit the principal balance of the certificate of deposit and the accrued interest thereon to the treasurer.

4.4(5) Funds shall be transferred according to instructions from the treasurer.

4.4(6) When a certificate of deposit is issued or renewed, it shall be held in safekeeping by the lender. The lender shall provide the treasurer a safekeeping receipt or a photocopy of the certificate of deposit upon issuance and at the time of renewal of the certificate of deposit. The safekeeping receipt or photocopy must include:

- a. Certificate of deposit number.
- b. Certificate of deposit rate.
- c. Certificate of deposit amount.
- d. Term of the certificate of deposit.
- e. Maturity date of the certificate of deposit.

4.4(7) The maximum period of eligibility for any borrower or business is five years from the issue date of the first certificate of deposit.

4.4(8) If the certificate of deposit is not renewed within ten days of the maturity date, the funds must be remitted to the treasurer. During the ten-day period, the funds shall continue to earn interest.

4.4(9) At renewal of the certificate of deposit, the lender shall certify that the certificate of deposit balance does not exceed the loan balance.

4.4(10) A certificate of deposit for the purposes of the LIFT program shall not be subject to a penalty for early withdrawal or to any other terms and conditions that a financial institution may otherwise place upon a certificate of deposit.

781—4.5(12) Qualifications on the loan.

4.5(1) The interest rate on the loan shall not exceed the rate of interest on the certificate of deposit by more than 4 percent. Points shall not supplement the loan rate, and a compensating balance shall not be required.

4.5(2) All other terms and conditions on the loan must be negotiated by the lender and the borrower. The lender is required by law to use usual and customary lending standards to determine the creditworthiness of the loan.

4.5(3) Neither the treasurer nor the state is liable for any payment of principal or interest on the loan or any late payments. The certificate of deposit is not collateral and shall not constitute security in any manner for the repayment of principal or any interest or charges thereon.

4.5(4) The amount and term of the loan may exceed the amount and term of the certificate of deposit. It is permitted for the interest rate on the loan to be variable based on adjustments in the rate of the certificate of deposit.

4.5(5) Loans are subject to the restrictions set forth in rule 781—4.6(12).

4.5(6) Loan proceeds shall not be used to refinance existing debt, including credit card debt. However, proceeds may be used to refinance a short-term bridge loan made in anticipation of the treasurer's approval of an eligible LIFT participant.

4.5(7) The lender shall acquire sufficient information to verify that the applicant meets the requirements before the borrower or business may become eligible to participate in a LIFT program. The lender and borrower applying for a loan under this program shall verify on the LIFT Lender/Borrower Application (Form 655-0142) that the borrower, owner, and business qualify.

4.5(8) The lender must complete the LIFT Renewal Application (Form 655-0143) at the time of renewal and submit it to the treasurer to ensure that the borrower and business continue to be eligible to participate in the LIFT program.

781—4.6(12) LIFT—small business program.

4.6(1) New and existing small businesses are eligible for the LIFT small business program. An existing small business is defined as a business that has annual gross sales of \$2 million or less at the time of application.

4.6(2) A borrower is ineligible if the borrower has received financial assistance from the LIFT program prior to July 1, 2006.

4.6(3) All owners of the business or borrowers must not have a combined net worth exceeding \$975,000. Combined net worth, as defined by this program, shall equal assets less liabilities for each owner of the business and persons borrowing for the business combined. Married individuals may divide their total net worth and assign one half of the total to each individual. If both individuals are owners of the business or borrowers, then their combined net worth must be used to determine net worth requirements.

4.6(4) Proceeds of loans under this program shall be used for business expenses including land, improvements, fixtures, machinery, inventory, supplies, equipment, information technology, or licenses, or patent, trademark, or copyright fees and expenses.

4.6(5) The maximum amount that a borrower or business may borrow from this program is \$200,000. Once the borrower or business has received LIFT funds totaling \$200,000, the borrower or business is ineligible for additional LIFT proceeds.

4.6(6) Proceeds shall not be used to speculate in real estate or for real estate held for investment purposes. Proceeds shall not be used to buy real estate for the purposes of renting or leasing.

4.6(7) A home-based business qualifies as a LIFT small business only if the person whose home is used for operation of the small business qualifies for a tax deduction for that portion of a home used for business pursuant to regulations of the Internal Revenue Service. An applicant who wishes to borrow from the LIFT small business program, who otherwise qualifies, and who has a home-based business or wishes to begin a home-based business must establish to the satisfaction of the lender that the applicant qualifies for a tax deduction for that portion of the applicant's home that the applicant uses or intends to use for the business pursuant to regulations of the Internal Revenue Service.

4.6(8) If the business holds a class "C" liquor license, sales of liquor, beer, and wine must not exceed 20 percent of annual sales.

[ARC 9214B, IAB 11/3/10, effective 12/8/10]

These rules are intended to implement Iowa Code sections 12.32 to 12.43 as amended by 2006 Iowa Acts, House File 2661.

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CHAPTER 5
DISCLOSURE OF INFORMATION REGARDING OPEN-END CREDIT
AND CREDIT CARDS

781—5.1(535) Definitions. As used in this chapter:

“Credit card” means as defined in Iowa Code section 537.1301, subsection 16. This includes lender credit cards issued by a lender and seller credit cards issued by a seller as defined in Iowa Code section 537.1301, subsection 39. These definitions include cards issued by a “financial institution,” as defined in section 535A.1, and cards issued by “like institutions” or retailers for customers to purchase or lease goods from the retailer or other retailers.

“Finance charge” means as defined in Iowa Code section 537.1301, subsection 19.

“Financial institution” means as defined in Iowa Code section 535A.1. This includes banks, savings and loans, credit unions, mortgage banking companies, industrial loan companies, or like institutions which operate in or have a place of business in this state. A “like institution” includes: 1) one which extends credit for the purchase or lease of goods and services from persons not related to the institution extending the credit; or 2) one which provides any of the “financial services” identified below, regardless of whether the institution is authorized to do business as, or identifies itself as, a bank, savings and loan, credit union, mortgage banking company, or an industrial loan company.

“Financial service” means a checking account, savings account, electronic funds transfer card, or credit card services offered to a retailer.

“Open-end credit” means as defined in Iowa Code section 537.1301, subsection 28.

“Person” means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

781—5.2(535) Form. Form 655-0146, “Iowa Open-End Credit and Credit Card Disclosure Statement,” as promulgated by the treasurer of state, shall be used in conjunction with the operation of this chapter.

781—5.3(535) Filing procedures. The form required to be filed shall be available from the treasurer of state’s office. The form shall be filed with the treasurer’s office no later than July 1 of each year. If any changes to the information required to be disclosed are made subsequent to July 1 but prior to January 1, an amended written report shall be filed by use of the appropriate form by January 1.

781—5.4(535) Who is required to file. The following persons or institutions are required to file the appropriate forms with the treasurer of state’s office for the following categories:

5.4(1) Credit cards: Any person or financial institution which issues credit cards to Iowans and solicits or accepts an application for a credit card from a person who resides in Iowa shall annually file Form 655-0146.

5.4(2) Open-end credit: A financial institution which accepts an application for open-end credit from a person who resides in Iowa shall annually file Form 655-0146.

5.4(3) Financial services: Rescinded IAB 11/25/92, effective 12/30/92.

781—5.5(535) Publication procedures. The treasurer of state shall determine the most effective method of publicizing the availability of the information obtained to consumers and interested parties. In all cases the information shall be available from the treasurer’s office upon request.

These rules are intended to implement Iowa Code section 535.15.

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CHAPTER 6
COORDINATION OF BONDING ACTIVITIES

781—6.1(12) Scope. Iowa Code chapter 12 grants authority to the treasurer of state to establish administrative procedures for the coordination of state bonding activities and selection of professional services for the issuance of obligations by an authority.

781—6.2(12) Definitions.

“*Authority*” means a department, agency, and public or quasi-public instrumentality of the state which has the power to issue obligations, except that “authority” does not include the state board of regents. “Authority” includes, but is not limited to, the authorities created under Iowa Code chapters 175 (Iowa Agriculture Development Authority), 175A (Economic Protective and Investment Authority), 220 (Iowa Finance Authority), 261A (Higher Education Loan Authority), 307B (Railway Finance Authority), 442A (Advance Funding Authority), and any other entity which has both of the following characteristics:

1. State officers or employees serve as members, officers, directors or employees of the entity or have the authority to appoint any of the above, and
2. The state has either a present or a future interest in any assets of the entity.

“*Marketing activities*” are those activities which are undertaken to promote the sale of obligations issued by an authority. These include, but are not limited to, presentation of oral or written information to sellers, buyers, underwriters, analysts, rating agencies, dealers and brokers.

“*Obligations*” means notes, bonds, including refunding bonds, and other evidences of indebtedness of an authority, including but not limited to private activity bonds as defined in section 141 of the Internal Revenue Code of 1986, notes and bonds issued by the authority pursuant to loan agreements with any other entity, and lease or installment purchase agreements between the authority and any entity other than the manufacturer of the property subject to the lease or installment purchase agreement.

“*Professional services*” are those services performed by persons other than employees of an authority which are undertaken in order to effectuate issuance of an obligation. These include, but are not limited to, the services of attorneys, accountants, financial advisors, banks, underwriters, and insurers.

“*Project sponsor*” is a person who enters into an agreement with an authority under which the authority issues obligations on behalf of the project sponsor but neither the authority nor the state assumes any liability for the repayment of the obligation.

“*Rating agencies*” are those entities which evaluate and rate obligations including, but not limited to, Moody’s Investors Service, Standard and Poors, and Fitch’s Investors Services.

“*Request for proposal (RFP)*” is a solicitation to vendors to submit proposals for providing professional services in connection with the proposed issuance.

“*Vendor*” means a person, firm, corporation, partnership, business, or other commercial entity offering to provide professional services.

781—6.3(12) Intention to issue obligations.

6.3(1) *Treasurer’s status with an authority.* The treasurer or the treasurer’s designee shall serve as an ex officio nonvoting member of each authority. The authority shall transmit to the treasurer all documents, notices, and materials which are distributed to any other member of the authority. The treasurer shall be permitted to attend all meetings, conferences or working sessions which any other member of the authority is permitted to attend.

6.3(2) *Notice to treasurer.* When members of an authority determine that the authority should prepare to issue obligations, the authority shall notify the treasurer of its intent to do so.

6.3(3) *Consultation with authority.* Upon determining that an authority intends to prepare to issue obligations, the treasurer or treasurer’s designee shall meet with the authority or its designee to discuss the following matters:

- a. Proposed amount, terms, and conditions of the issue;
- b. Documents, instruments, and other materials necessary to effectuate issuance and marketing;

- c. Professional services necessary to effectuate issuance;
- d. Proposed schedule for preparation, issuance, and marketing;
- e. Whether the issue will be sold on a negotiated, competitive, or other basis;
- f. Compensation for vendors of professional services;
- g. Projected costs to the authority of vendor selection.

781—6.4(12) Selection of vendors of professional services.

6.4(1) *Preparation of request for proposal.* After consulting with the authority, the treasurer shall prepare or approve requests for proposal for all appropriate professional services.

6.4(2) *List of vendors.* The treasurer shall maintain a list of vendors of professional services who have requested to be notified of RFPs.

6.4(3) *Review of proposals.* The treasurer shall review all proposals submitted in response to an RFP. In evaluating the proposals submitted, the treasurer may consider any factors relevant to the vendor's qualifications to render the services in question including, but not limited to, proposed compensation and expenses, vendor's experience with similar issues, vendor's ability to provide the services of individuals with specific knowledge in the relevant subject matter, length of the proposed engagement and scheduling needs of the authority. Regardless of the number of proposals submitted, the treasurer may eliminate from further consideration any vendor who is, in the treasurer's opinion, unable to render the services specified in the RFP.

6.4(4) *Selection of vendor.* The treasurer shall review all information submitted by vendors and shall select a vendor to perform the services of the type requested in the RFP. In making this selection, the treasurer may consult with the authority and the treasurer shall employ the criteria set out in subrule 6.4(3).

6.4(5) *Compensation of vendor selected.* The treasurer shall fix the compensation of the vendor selected. The treasurer shall promptly advise the authority in writing of the vendor selected and the terms and conditions under which the vendor shall be employed. Upon receipt of notice of selection by the treasurer, the authority shall promptly employ the vendor subject to the terms and conditions specified by the treasurer. The vendor shall account to the authority for all expenses incurred and services rendered. The authority shall make appropriate payments directly to the vendor.

781—6.5(12) Exceptions to vendor selection procedure.

6.5(1) *Waiver required by public interest.* The treasurer may waive the procedures set out in subrules 6.4(1) to 6.4(3) if the treasurer determines that it is in the public interest to do so. The treasurer shall waive the above procedures by filing written notice with the executive council stating why the waiver is in the public interest. In the event that the treasurer waives the above procedures, the treasurer shall determine the procedures to be followed in selecting vendors of professional services for an authority.

6.5(2) *Waiver for project sponsors.* The treasurer may waive the provisions set out in subrules 6.4(1) to 6.4(5) if the treasurer determines that all of the following conditions exist:

- a. The proposed obligation is being issued by the authority on behalf of a project sponsor;
- b. Purchasers of the proposed obligation will have no recourse, directly or indirectly, to the authority or the state in the event of a default on the obligation; and
- c. Vendors of professional services affected by the waiver will be employed and compensated by the project sponsor and not by the authority.

6.5(3) *Competitive sale of obligations.* In the event that obligations are to be issued by soliciting bids from several underwriters in a competitive sale, the treasurer shall supervise the bidding process in consultation with the authority. The treasurer shall prepare the necessary documents including, but not limited to:

- a. Official notice of sale;
- b. Advertising of official notice; and
- c. Official bid form.

The treasurer shall establish a time and location for opening bids and shall notify the authority and the successful bidder upon awarding the successful bid. Selection of all other vendors of professional services shall be made according to the procedures set out in rule 6.4(12).

781—6.6(12) Investment of proceeds. The treasurer shall direct the investment or deposit of the proceeds of all obligations issued on or after July 1, 1986, subject to the terms and conditions of the obligations, except that the authority shall direct the investment or deposit of proceeds necessary to fund its ongoing operations.

781—6.7(12) Information to be provided to treasurer. Each authority shall, upon request, provide the treasurer with any statistical or financial information in the possession of the authority which, in the treasurer's opinion, is needed to prepare, issue or market any obligations of the authority.

781—6.8(12) Costs of vendor selection. The treasurer may submit to the authority accounts for all costs incurred in the selection of vendors for the authority, including general administrative costs incurred by the treasurer. The authority shall disburse the amounts presented in the treasurer's accounts.

These rules are intended to implement Iowa Code chapter 12.

[Filed 6/5/87, Notice 1/28/87—published 7/1/87, effective 8/5/87]

CHAPTER 7
REPORTING ON STATE AND LOCAL
GOVERNMENT BONDING ACTIVITIES

781—7.1(12) Scope. Iowa Code chapter 12 requires the treasurer of state to gather information regarding outstanding obligations of each political subdivision, instrumentality, agency, and authority of the state.

781—7.2(12) Definitions. As used in this chapter:

“Issuers” means an authority as defined in rule 781—6.2(12), the state board of regents, all political subdivisions of the state of Iowa, and any other entity which has both of the following characteristics:

1. Officers or employees of a political subdivision serve as members, officers, directors, or employees of the entity or have authority to appoint any of the above, and
2. The political subdivision has either a present or future interest in the assets of the entity.

“Obligations” means notes, bonds, including refunding bonds, and other evidences of indebtedness of an issuer, including but not limited to private activity bonds as defined in section 141 of the Internal Revenue Code of 1986.

781—7.3(12) Form. The following form as promulgated by the treasurer of state, shall be used in conjunction with the operation of this chapter:

Form 655-0150, “Outstanding Obligations Disclosure Statement.”

781—7.4(12) Filing procedures. The form required to be filed shall be available from the treasurer of state’s office. Form 655-0150 must be filed with the treasurer’s office no later than November 15 of each year.

781—7.5(12) Who is required to file. All issuers, as defined in this chapter, who issue obligations are required to file the appropriate forms with the treasurer of state’s office.

781—7.6(12) Publication procedures. The treasurer of state shall determine the most effective method of publicizing the availability of the information obtained to interested parties. In all cases, the information shall be available from the treasurer’s office upon request.

These rules are intended to implement Iowa Code chapter 12.

[Filed 6/5/87, Notice 2/11/87—published 7/1/87, effective 8/5/87]

CHAPTER 8
ACCEPTING CREDIT CARD PAYMENTS

781—8.1(12) Purpose. Iowa Code section 12.21 grants authority to the treasurer of state to enter into an agreement with a financial institution to provide credit card receipt processing for state departments and to establish administrative and other procedures as necessary to implement the acceptance of credit card payments by state departments that are authorized to accept such payments. The purpose of these rules is to provide for the administration and operation of credit card receipt processing for state departments. [ARC 9100B, IAB 9/22/10, effective 10/27/10]

781—8.2(12) Definitions. As used in this chapter:

“*Acquiring bank*” means a financial institution that receives credit card transactions and then settles with the card-issuing banks.

“*Chargeback*” means a transaction disputed by a cardholder or card issuer.

“*Convenience fee*” means a fee charged to the cardholder for the convenience to that cardholder of using a particular method of payment in a credit or debit card transaction in accordance with the network regulations governing that transaction.

“*Credit card*” means the same as defined in Iowa Code section 537.1301, subsection 17.

“*Credit card associations*” means Visa, MasterCard, American Express, Discover Network, Diners, JCB, and any other organization that issues or sponsors credit cards or signature-based debit cards that are accepted by state departments.

“*Debit card*” means a card used to purchase goods or services and to obtain cash in which the cardholder’s personal deposit account is reduced by the transaction amount. Debit card transactions that are processed on credit card association networks are typically called signature-based debit card transactions, while debit card transactions processed on electronic funds transfer networks are generally referred to as PIN-based transactions.

“*Financial institution*” means the same as defined in Iowa Code section 527.2 and includes any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of any state or federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under Iowa Code chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company.

“*Merchant*” means the state department or subdivision that accepts credit card and debit card payments.

“*Merchant guidelines*” means the manual issued by the merchant services provider that prescribes the rules and procedures governing credit card and debit card transactions and a state department’s use of the credit card and debit card processing services.

“*Merchant services provider*” means a company that manages the processing of credit card and debit card transactions among merchants, credit card issuers, and acquiring banks.

“*Payment card industry data security standards*” or “*PCI-DSS*” means a set of comprehensive requirements for credit card data security developed by the Payment Card Industry Council, founded by American Express, Discover Financial Services, JCB International, MasterCard Worldwide and Visa Inc. International.

“*Treasurer*” means the treasurer of the state of Iowa and staff members who carry out duties delegated by the treasurer.

[ARC 9100B, IAB 9/22/10, effective 10/27/10]

781—8.3(12) State department requirements for accepting credit card payments.

8.3(1) A state department shall notify the treasurer of its intent to accept credit card payments and provide the treasurer with the following information:

- a. The type of goods and services it will offer for payment by credit card and debit card.
- b. The estimated per-transaction amount, yearly transaction volume, and total yearly dollar volume to be collected.

- c. The number and location of departmental sites that may accept credit card payments.
- d. The method that the department will use to accept card payments, for example, through a Web site, a virtual terminal, a point-of-sale terminal, or a wireless terminal.

8.3(2) A state department shall purchase or lease any equipment or software required to accept credit card payments, or pay any fees charged for access to online virtual terminals used to process credit card and debit card payments.

8.3(3) A state department shall sign an agency participation agreement with the treasurer acknowledging its responsibilities under the credit card contract, including, but not limited to:

- a. Following the procedures for accepting payments by credit card and debit card as outlined in the agreement between the financial institution, merchant services provider, and treasurer, and as specified in the merchant guidelines.

- b. Following procedures issued by the treasurer to record receipts, corrections to receipts, refunds, chargebacks, expenses, and any other accounting transactions associated with accepting credit card and debit card payments.

- c. The payment of all equipment and software costs, all processing fees and charges incurred in accepting card payments, including the costs of supplies, and all fees charged for annual PCI-DSS reviews.

- d. Becoming compliant with PCI-DSS and maintaining that compliance as long as the department accepts credit card and debit card payments.

8.3(4) A state department shall receive authorization from the treasurer prior to accepting credit card and debit card payments.

8.3(5) A state department shall follow the procedures and rules for charging a convenience fee for credit card and debit card transactions as outlined in the agreement between the financial institution, merchant services provider, and treasurer, and as specified in the merchant guidelines, and by the credit card associations' rules.

8.3(6) A state department shall follow the instructions provided by the treasurer for completing cash receipts documents to reflect credit card transactions that post to the treasurer's account at the financial institution.

8.3(7) A state department shall be responsible for achieving and maintaining compliance with all applicable PCI-DSS.

8.3(8) A state department shall be responsible for completing an annual review of its compliance with PCI-DSS, as required by the treasurer's credit card processing contract and by the PCI-DSS. At any time throughout the year, the state department shall promptly cure any instance of noncompliance of which it becomes aware.

8.3(9) A state department shall be responsible for any penalties, fees, fines, and other costs assessed against the department, the treasurer, or the state of Iowa, resulting from or arising out of the department's violation of, or noncompliance with, PCI-DSS.

[ARC 9100B, IAB 9/22/10, effective 10/27/10]

781—8.4(12) Procedures for administering the credit card receipt process.

8.4(1) The treasurer shall enter into an agreement with a financial institution to provide credit card payment processing for state departments.

8.4(2) The treasurer shall specify which credit cards may be accepted by state departments.

8.4(3) The treasurer shall enter into an agency participation agreement with each state department authorized to accept credit card payments under the credit card processing contract.

8.4(4) The treasurer shall provide state departments with a copy of the merchant operating guidelines.

8.4(5) The treasurer shall provide state departments with information on costs for credit card and debit card processing, equipment, software, and supplies as specified under the credit card processing contract.

8.4(6) The treasurer shall provide state departments with instructions on creating cash receipts documents for credit card receipts.

8.4(7) The treasurer shall notify a state department that it is authorized to accept credit card and debit card payments and provide the department with its merchant identification number and other account information.

8.4(8) The treasurer shall terminate the agency participation agreement and a state department's authority to accept credit card and debit card payments if a state department fails to comply with the requirements outlined in this chapter.

[ARC 9100B, IAB 9/22/10, effective 10/27/10]

781—8.5(12) Adjustments for convenience fees. If a state department is allowed to charge its customers a convenience fee under the credit card processing contract, then the following shall apply:

1. The treasurer shall consult with the state department to assist in determining the amount by which the department's fees may be adjusted to reflect the cost of credit card processing.

2. The state department shall follow all credit card associations' rules on how and when a convenience fee may be charged.

3. The treasurer shall notify state departments of any changes in the credit card associations' rules on convenience fees.

[ARC 9100B, IAB 9/22/10, effective 10/27/10]

These rules are intended to implement Iowa Code section 12.21.

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CHAPTER 9
UNCLAIMED PROPERTY
[Prior to 5/18/88, see Treasurer 781—Ch 2]

781—9.1(556) Availability of records. Records of unclaimed property and the owners thereof are available in the office of the treasurer of state. These records may not be removed from the office of the treasurer of state. A charge will be made to reimburse the treasurer of state for the exact amount of time spent by the treasurer of state employees in assisting the public to prepare lists from these records.

781—9.2(556) Purpose. Iowa Code chapter 556 authorizes the treasurer of state to establish administrative rules that are necessary for the purpose of carrying out the provisions of chapter 556, the uniform disposition of unclaimed property Act.

781—9.3(556) Definitions. In addition to the terms defined in Iowa Code section 556.1, the following words or terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“*Act*” means the uniform disposition of unclaimed property Act, Iowa Code chapter 556.

“*Contract auditor*” means any person or entity engaged or hired by the treasurer or the division to provide unclaimed property examination services. “Contract auditor” includes agents, employees and any subcontractor engaged by a contract auditor or engaged by its subcontractors.

“*Division*” means the Iowa unclaimed property division within the Iowa state treasurer’s office that has the responsibility of administering the Act.

“*Due diligence*” means the efforts required to be undertaken by a holder of unclaimed property to find the rightful owner of such property before the property is delivered to the state.

“*Finder*” means a person hired or engaged to assist owners, heirs or other persons in the recovery of unclaimed property.

“*Finder agreement*” means an agreement to pay a fee, commission, or other compensation to a finder to identify, locate, deliver, recover, or assist in the recovery of unclaimed property reported under the Act.

“*Last activity date*” means the last verifiable date of owner-initiated activity or contact with respect to unclaimed property.

“*Treasurer*” means the treasurer of the state of Iowa.

781—9.4(556) Forms. The following approved forms will be used:

1. Claim form means the form or any other document acceptable to the division used by a claimant to file a claim relative to unclaimed property with the division.
2. Safe Deposit Box Inventory Form is the form required to be used to inventory and report the contents of safe deposit boxes reportable under the Act.
3. Holder Report Form is the form holders are required to use to report unclaimed property to the division.
4. UP4 Negative Report is the form that may be used if a holder has no unclaimed property to report.

781—9.5(556) Due diligence. Holders are to exercise reasonable and necessary due diligence as is consistent with good business practice in attempting to reactivate dormant accounts and to locate owners of unclaimed property.

781—9.6(556) Reporting aggregate amounts to the division. Holders shall report amounts under \$25, unclaimed property of unknown owners, and property when the owner has disclaimed entitlement to the property.

781—9.7(556) Reporting safe deposit box contents.

9.7(1) Safe deposit boxes or other safekeeping depositories that have been abandoned shall be opened and inventoried in the presence of at least two employees of the holder.

9.7(2) Holders shall list the contents of each box inventoried on a separate Safe Deposit Box Inventory Form provided by the division.

9.7(3) The property and a copy of the Safe Deposit Box Inventory Form shall then be sealed for safekeeping until delivered to the owner or to the division when required by the Act.

781—9.8(556) Disposition of safe deposit box contents. If the treasurer determines, after investigation and after an attempt to dispose of the unclaimed property in accordance with the Act, that the probable cost of sale exceeds the value of the property, the treasurer may destroy or otherwise dispose of the property at any time.

781—9.9(556) Early reporting of unclaimed property.

9.9(1) A holder may request permission to report and deliver property to the division before it is presumed abandoned by sending a written request to the division.

9.9(2) The letter must identify the property to be reported and delivered and the reasons for requesting permission to report and deliver the property prior to the date it is presumed abandoned.

9.9(3) The division may consent to early reporting and delivery at its sole discretion according to terms and conditions prescribed by the division.

781—9.10(556) Examination of holders. The division may conduct an examination of a holder if the division has reason to believe a holder has failed to report unclaimed property pursuant to the Act.

9.10(1) Examination and review. The treasurer may authorize employees of the treasurer and contract auditors to conduct examinations and review records in the course of an examination.

9.10(2) Examination entrance letter. The division shall send an examination entrance letter to holders selected for examination.

9.10(3) Examination records request. Holders subject to examination are required to comply with any and all requests for records that are made by the division or any contract auditor conducting an examination.

9.10(4) Examination entrance conference. The division, at its option, shall conduct an examination entrance conference with a holder prior to the commencement of an examination, at which the division shall identify the examination period and describe the general examination methods that will be used including, but not limited to, any estimation techniques that may be utilized.

9.10(5) Estimation. The division may use estimation techniques where no holder records exist or the records are insufficient to determine the holder's obligation due pursuant to the Act.

781—9.11(556) Report of the examination findings. Upon completion of an examination, the division shall provide a written report reflecting the total unclaimed property reporting liability and, pursuant to the Act, any interest due on amounts due and owing for failure to report and deliver property due and payable for prior years.

The division has the discretion to hold a conference with the holder to provide the written report.

781—9.12(556) Delivery of examination findings by the holder. The holder shall deliver to the division within 30 calendar days any unclaimed property and interest due to the division based upon the examination findings.

781—9.13(556) Examination closure letter. Upon receipt of the examination report and delivery of unclaimed property resulting from the examination, the division shall issue an examination closure letter informing the holder that the examination is closed.

781—9.14(556,78GA,ch1191) Appeal of examination findings. A holder may appeal the examination findings of the division.

9.14(1) The holder may utilize the appeals process after receipt of the examination report from the division.

9.14(2) Failure to submit the appeal request within 30 calendar days shall constitute an acceptance of the total unclaimed property reporting liability findings.

9.14(3) The holder shall submit to the division a written request for an appeal along with all supporting documentation.

9.14(4) The division shall contact the holder and schedule an appeal meeting within 20 calendar days of receipt of the holder's appeal request.

9.14(5) An appeal review shall be conducted at which time the holder shall present evidence supporting the holder's basis of the appeal.

9.14(6) Based on the evidence and additional information presented during the appeal, the division will render a decision. Such decision will be written and sent to the holder within 30 calendar days of the appeal meeting.

9.14(7) The holder shall file a report and deliver unclaimed property reflecting the unclaimed property reporting liability and interest due on amounts due and owing as determined by the division within 30 calendar days.

781—9.15(556,78GA,ch1191) Entering into contracts with contract auditors. The treasurer may enter into contracts with persons, pursuant to procedures prescribed by the treasurer, for the sole purpose of examining the records of holders to determine compliance with the Act. The treasurer may consider any relevant factors when entering into a contract for services requested in the performance of an unclaimed property examination.

9.15(1) *General conditions and requirements.*

a. Contract auditors shall comply with all terms and conditions specified in the contract with the treasurer.

b. Contract auditors shall not subcontract any work without prior written authorization from the treasurer. The contract auditors are responsible for ensuring that any subcontractors used during an examination possess sufficient training and experience to adequately perform the unclaimed property examination and agree to comply with all terms and conditions of the contract auditor's contract with the treasurer.

c. Contract auditors shall possess an ability to examine the records of entities holding various types of unclaimed property.

d. Contract auditors shall have security procedures in place to ensure that all unclaimed property examination reports and working papers are secure.

e. Contract auditors shall have the ability to evaluate and comment on the holder's procedures and accounting systems related to capturing unclaimed property for present and future reporting periods.

f. In all matters relating to an examination assignment, independence in mental attitude is to be maintained.

g. Contract auditors shall not engage in any examination without written consent from the treasurer.

9.15(2) *Guidelines.* Contract auditors shall adhere to the following guidelines.

a. Contract auditors shall not participate in examinations in which such participation could be construed or perceived as a conflict of interest. Should the contract auditor believe that it could not conduct an assigned examination due to a conflict of interest or for any other reason, the contract auditor shall notify the division. The division shall then determine whether recusal of the contract auditor from the assignment is appropriate or necessary. If the contract auditor is recused from conducting the examination of a holder, another contract auditor shall be assigned.

b. Contract auditors shall maintain strict confidentiality of any nonpublic records or documents gathered during the course of an examination in accordance with their contract.

c. Contract auditors shall properly document their review and make their working papers gathered during examinations available on demand for review by the treasurer and the attorney general's office.

d. Upon request, the contract auditors shall provide the holder with relevant copies of working papers supporting any calculation made of unclaimed property reportable and deliverable to the treasurer.

e. Contract auditors shall maintain working papers for a minimum of five years following the completion of the examination assignment, the delivery of unclaimed property, the resolution of any appeal, or the finality of judgment in any litigation, whichever is later.

f. Contract auditors should conduct examinations consistent with the Act and other applicable law, policies of the treasurer, generally accepted accounting principles, generally accepted auditing standards, and any relevant examination rules promulgated pursuant to the Act as they relate to the reporting and delivery of unclaimed property from holders or persons.

781—9.16(556) Claims.

9.16(1) All claims for abandoned property shall be filed with the division on the division's claim form or such other documents as the division finds acceptable.

9.16(2) Claim form requirements. The claim form shall be completed in its entirety. Under no circumstances will the division process a claim if a claimant fails to include the following:

- a.* Social security number or tax identification number, or both, of all claimants;
- b.* Signature of claimant(s).

781—9.17(556) Claimant requirements and documentation. The treasurer shall consider any claim filed under the Act.

9.17(1) Claimants should provide the following supporting documentation with their claims, as applicable:

- a.* Documentation supporting the claim requirements under 9.16(2).
- b.* Names, addresses and telephone numbers of any potential heirs of the apparent owner, along with the sworn statement of claimant that the claimant has no knowledge of any other potential heirs or any other claimants.
- c.* A description of the extent to which the apparent owner's estate was administered by the probate court if applicable.
- d.* Name and last-known address of the apparent owner as was reported by the holder.
- e.* Documentation showing a copy of claimant(s) signature(s).
- f.* A copy of claimant(s) driver's license or social security card.
- g.* Proof of ownership if the claimant is the apparent owner.
- h.* Copies of prior tax returns, birth certificate, passport or other legal documents showing claimant's identity.
- i.* If claimant's name has changed, copies of supporting documentation showing the name change.
- j.* Documentation showing that the owner lived at the last-known address as reported by the holder if different from the current address. If no documentation can be provided for proof of last-known address as reported by the holder, documentation showing that the claimant conducted business with the holder.
- k.* Such other documentation as the division may request or determine as necessary given the nature or complexity of the claim.

9.17(2) The claimant shall affirmatively certify that the claimant is the true owner and agree to hold harmless and indemnify the division, its employees, and the state in the event of a superior claim to such property by another claimant or person.

9.17(3) If the subject property is more than \$200 or is security-related, the signature of the claimant must be notarized by a notary public or be guaranteed by an officer of a bank or financial institution.

781—9.18(556) Proof of payment. A holder, subsequent to payment or delivery of abandoned property to the division, may make payment to the apparent owner and file a proof of payment with the division.

Upon receiving reimbursement from the division, the holder shall assume liability for the claimed assets, and indemnify and hold harmless the division from all future claims related to the claimed assets.

These rules are intended to implement Iowa Code chapter 556 and 2000 Iowa Acts, chapter 1191.

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CHAPTER 10
INFORMAL CLAIMS FOR SECOND INJURY FUND

781—10.1(85) Benefits of second injury fund. If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of, or loss of use of, another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no preexisting disability. In addition to this compensation, and after the expiration of the full period provided by law for payments by the employer, the employee shall be paid out of the second injury fund the remainder of compensation payable for the degree of permanent disability involved after first deducting the compensable value of the previously lost member or organ. Any benefits received by the employee, or to which the employee may be entitled, by reason of increased disability from any state or federal fund or agency, to which the employee has not directly contributed, shall be regarded as a credit to any award made against the second injury fund.

10.1(1) *Informal claims.* Employees with second injuries as covered in Iowa Code sections 85.63 to 85.69 and rule 10.1(85) may file claims for informal settlements of controversies arising in connection with the second injury fund. An informal claim may be filed under these rules if the claimant has not previously filed a contested case with the industrial commissioner under Iowa Code section 86.14 and 343—4.1(1) and 4.1(2). An informal settlement of a pending contested case is governed by 343—6.1(85,86).

10.1(2) *Tolling of claim.* A claimant's filing of an informal claim under these rules shall not toll the applicable statute of limitations and filing for informal settlement is not a prerequisite to filing a contested case proceeding for second injury fund benefits with the industrial commissioner under Iowa Code section 86.13.

10.1(3) *Filing an informal claim.* The claimant shall initiate the procedure if an informal settlement is desired by filing a notarized claim for an informal determination with the treasurer within two years from the date of the occurrence of the injury for which benefits are claimed. The claim shall be filed on the second injury fund claim form which is available at the Office of the Treasurer, Capitol Building, Des Moines, Iowa 50319. This form must be complete and contain all exhibits as specified in subrule 10.1(4). The treasurer may require additional documentation. If the treasurer requests additional documentation, it must be provided within 60 days of the treasurer's request. The treasurer shall issue a written decision to the claimant within 90 days after the day that all necessary claim documentation is received by the treasurer.

If a claimant is not satisfied with the decision of the treasurer on an informal claim, the claimant may then file a contested case proceeding as per Iowa Code section 86.14, if the statute of limitations has not tolled for the filing under Iowa Code section 85.26.

10.1(4) *Required claim documentation.* Documents required to be filed with the second injury fund claim form shall include:

- a. All medical records and reports concerning the first injury;
- b. All medical records and reports concerning the second injury;
- c. All records reflecting any payment of social security benefits for the first or second injury;
- d. All employer's records concerning the second injury including, but not limited to, documents reflecting workers' compensation payments and weekly rates of compensation following the second injury;
- e. All records of workers' compensation insurance carriers which covered the second injury; and
- f. All employer's records concerning claimant's employment following the second injury.

10.1(5) *Rescission of informal claim.* A claimant may at any time rescind the informal claim and file a contested case proceeding as per Iowa Code section 86.14. Filing a contested case will automatically terminate consideration of an informal claim filing.

10.1(6) *Payment on claim by treasurer.* If the treasurer determines that the claim should be paid, the treasurer shall submit recommendation to the industrial commissioner for authorization and for a written order in accordance with Iowa Code section 85.67. This recommendation shall indicate the amount of

the weekly compensation to be paid, number of weeks to be paid, the date when payment shall begin, and the length of time payments shall be paid.

This rule is intended to implement Iowa Code section 17A.10.

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CHAPTER 11
SOUTH AFRICA INVESTMENT RESTRICTIONS
Rescinded IAB 3/30/94, effective 5/4/94

CHAPTER 12
TECHNICAL INVESTMENT INFORMATION AND ASSISTANCE

781—12.1(12) Definitions. The terms contained in Iowa Code section 12.62 are defined as follows:

“*Assistance*” is defined as the communication of technical information to those public entities requesting the information. The treasurer of state’s investment division will assist those public entities who request help by providing them with technical information regarding investment or deposits of public funds. Assistance will be provided to the requester in written form or by telephone. Assistance does not include the actual investment of a public entity’s funds by the treasurer of state’s investment division.

“*Public entities*” is defined as political subdivisions, the state board of regents, instrumentalities, and agencies of the state authorized to invest funds.

“*Technical information*” includes any information in the possession of the investment division of the treasurer of state’s office pertaining to: how a type of investment is normally structured and if a particular type of investment is permitted by the Iowa Code; how interest and yields are computed by the industry; how to make yield comparisons when different interest calculation methods are used for different securities; the market liquidity of particular classes of investment securities; general risk and return tradeoffs of particular security types; how investments rank in terms of safety, liquidity and return characteristics; procedures for depositing public funds in Iowa financial institutions; key provisions to include in investment policies and agreements to ensure the safety of public funds; and any other information in the possession of the treasurer of state’s investment division which pertains to investments or deposits of public funds. Technical information does not include legal advice or the making of investment decisions by the treasurer of state’s investment division for public entities, nor does it include information regarding requirements of the Iowa Code which do not pertain to the investment or deposit of public funds.

781—12.2(12) Availability of technical investment information. The treasurer of state will provide assistance and technical information to public entities in one or more of the following ways:

12.2(1) *Written form.* A public entity may request technical investment information and assistance by writing to: Treasurer of State, Attention: Investment Assistance, State Capitol, Des Moines, Iowa 50319.

12.2(2) *By telephone.* A public entity may request technical investment information and assistance by telephoning the state treasurer’s investment division at (515)281-5369 or (515)281-5084. The treasurer of state reserves the right to require a public entity to request technical investment information and assistance in written form.

12.2(3) *Newsletter.* The treasurer of state may provide technical investment information and assistance to public entities by producing a newsletter which contains answers to frequently asked questions or other information which the treasurer of state believes will be useful to them. Any newsletter will be mailed to those public entities which regularly receive the minimum interest rates on deposits notice from the treasurer of state’s office. The treasurer of state will also make any newsletter available to the various associations and leagues which provide services to public entities.

12.2(4) *Workshops or seminars.* The treasurer of state will provide investment personnel to speak at investment workshops or seminars for public treasurers when requested to do so.

12.2(5) *Requests for legal advice or opinions.* The treasurer of state will not provide legal advice to public entities. However, the treasurer of state may direct public entities to existing legal opinions or rulings which may be applicable to the question raised.

These rules are intended to implement Iowa Code section 12.62.

[Filed emergency 9/1/92—published 9/30/92, effective 9/1/92]

CHAPTER 13
DEPOSIT AND SECURITY OF PUBLIC FUNDS IN BANKS

781—13.1(12C) Scope and transition procedures.

13.1(1) Iowa Code chapter 12C grants authority to the treasurer of state to establish administrative rules and procedures to implement a system for securing deposits of public funds in banks, savings and loans, and credit unions through the pledge of eligible collateral. This chapter shall apply to the system for securing certain deposits of public funds in Iowa banks as defined by Iowa Code section 12C.1, subsection (2a).

13.1(2) Any form, communication, or transaction contemplated by this chapter may be completed and signed by wire transfer or other electronic means authorized by this chapter or as otherwise permitted or accepted by the treasurer. The treasurer may require that communications from an approved custodian to the treasurer be electronic.

781—13.2(12C) Definitions. As used in this chapter:

“Approved custodian” means a financial institution that has facilities for the safekeeping of securities and that has been approved under this chapter by the treasurer of state to serve as the treasurer’s agent in safekeeping collateral pledged to the treasurer of state to secure uninsured deposits of public funds.

“Bank” means “bank” as defined in Iowa Code section 12C.1, subsection (2a).

“Control,” including controlling, controlled by, and under common control, shall be presumed to exist if a pledging bank, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any approved custodian. Control, including controlling, controlled by, and under common control, shall also be presumed to exist if an approved custodian, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any pledging bank.

“Eligible collateral” means any one or any combination of the securities or other forms of collateral as described in Iowa Code section 12C.22, subsection 6, and acceptable to the treasurer. Cash shall be considered eligible collateral.

“Excess public funds” means:

1. For a bank, the amount by which the public funds deposited by a public unit having an aggregate market value plus accrued interest that exceeds the total capital of the bank as defined in Iowa Code section 12C.22, subsection 2.

2. For an out-of-state bank, the amount by which the public funds deposited by a public unit in an Iowa branch of the out-of-state bank having an aggregate market value plus accrued interest that exceeds the Iowa branch capital of the out-of-state bank as determined under Iowa Code section 12C.22, subsection 3.

“Letter of Credit” means an irrevocable and nontransferable Letter of Credit, upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or in the form prescribed by the treasurer as provided on the treasurer’s Web site at www.treasurer.state.ia.us or in the treasurer’s office pursuant to rule 781—13.3(12C). Letters of Credit will be held in the treasurer’s vault.

“Market value” means the value of a pledged security calculated by the treasurer or the treasurer’s designee using the average of the closing bid and ask price from a nationally recognized pricing source (including but not limited to the Wall Street Journal, Bloomberg Financial Markets, Telerate, Reuter’s, or a nationally recognized broker dealer). If no nationally recognized pricing source is available, the market value shall mean pricing in a commercially reasonable manner or manner consistent with standard industry practices. Market value does not include accrued interest.

“Minimum collateral market value amount” means the minimum dollar amount of eligible collateral required to be pledged by a pledging bank to the treasurer to secure all uninsured public funds which shall at all times equal or exceed excess public funds.

“Out-of-state bank” means a bank that is chartered in a state other than Iowa and operates one or more branches in Iowa.

“Pledged collateral” or *“pledged securities”* means eligible collateral pledged by the pledging bank under the Master Custodial Agreement for the Deposit of Public Funds in Banks, the Pledge and Security Agreement, and any collateral additions or substitutions thereto evidenced by a joint receipt of custody or other evidence of control acceptable to the treasurer.

“Pledging bank” means a bank that is required to pledge eligible collateral pursuant to Iowa Code section 12C.22 and this chapter.

“Public funds” or *“public deposits”* means “public funds” or “public deposits” as defined in Iowa Code section 12C.1, subsection (2e).

“Public units” means the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body; an electric power agency; federal and state grant moneys of a quasi-public state entity under Iowa Code section 12C.1, subsection (2e), and this chapter. Public units additionally include, but are not limited to:

1. Transit authorities.
2. Municipal housing programs.
3. Solid waste agencies.
4. Waterworks.
5. City cemeteries.
6. County fair boards.
7. Regional planning agencies.
8. County care facilities.
9. County conservation boards.
10. Sanitary districts.
11. Iowa family farm development authority.
12. Iowa railway finance authority.
13. State board of regents.
14. State fair board.
15. State racing and gaming commission.
16. Iowa college student aid commission.
17. Iowa higher education loan authority.
18. Area education agencies.
19. Community action programs.
20. Community colleges.

Federal agencies, or political subdivisions thereof, are not public units under this chapter. Cooperatives, police and fire pension funds deposited for the benefit of the beneficiaries and fully covered by federal insurance, and bond sinking funds deposited pursuant to a bond covenant and which are fully covered by federal insurance are not public units.

“Rate-setting notice” means the monthly electronic posting of minimum deposit rates to public units by the rate-setting committee.

“Superintendent” means the superintendent of banking of the state of Iowa.

“Treasurer” means the treasurer of the state of Iowa.

“Uninsured public funds” or *“uninsured public deposits”* means any amount of public funds of a public funds depositor on deposit in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the Federal Deposit Insurance Corporation.

781—13.3(12C) Forms. The following forms are required for compliance with Iowa Code chapter 12C and this chapter. Current versions of each form utilized by banks, pledging banks and approved custodians are available on the treasurer’s Web site at www.treasurer.state.ia.us and in the treasurer’s office.

1. Master Custodial Agreement for the Deposit of Public Funds in Banks.
2. Pledge and Security Agreement.

3. Letter of Credit.
4. Electronic Mail Protocol.
5. Securities Account Control Agreement.
6. Certificate and Approval for Withdrawal, Substitution or Addition of Collateral.
7. Statement of Accounts.
8. Public Depositor Claim Form.
9. Release by Public Deposit.

781—13.4(12C) Duties and responsibilities of a pledging bank.

13.4(1) A pledging bank shall complete, sign, and submit to the treasurer an executed Pledge and Security Agreement.

13.4(2) A savings and loan shall calculate and certify to the superintendent of banking the amount of public funds on deposit at the savings and loan on or before the tenth day of February, May, August, and November of each year as of the end of the previous calendar quarter. An out-of-state bank that has one or more branches in Iowa shall calculate and certify to the superintendent of banking the amount of public funds on deposit at each such branch of the out-of-state bank on or before the tenth day of February, May, August, and November of each year as of the end of the previous calendar quarter.

13.4(3) A pledging bank shall deposit and maintain eligible collateral with the treasurer's approved custodian which at all times has a total market value of not less than the minimum collateral market value amount.

13.4(4) A pledging bank shall at all times be eligible to accept public deposits as required by Iowa Code sections 12C.6A and 12C.23A, subsection 1.

13.4(5) A pledging bank shall grant a perfected security interest to the treasurer in all pledged collateral to secure the repayment of uninsured public funds deposited in a pledging bank and for satisfying any future assessments made against the pledging bank by the treasurer pursuant to Iowa Code chapter 12C. The pledging bank shall take all steps necessary to ensure that the treasurer has a valid, perfected, enforceable, first priority security interest in any pledged collateral. This security interest shall be perfected by entering into a Pledge and Security Agreement with the treasurer and by transferring the eligible collateral to the treasurer's approved custodian. By accepting public funds for deposit, a pledging bank agrees to waive any defenses it may have with respect to any failure of the Pledge and Security Agreement to effect a viable, perfected, enforceable, first priority security interest.

13.4(6) A pledging bank shall promptly and in a timely manner remit to the treasurer's approved custodian payment for fees associated with the treasurer's approved custodian's services as safekeeping agent upon receipt of a statement from the treasurer's approved custodian.

13.4(7) A pledging bank shall not utilize the services of an approved custodian in which the pledging bank or an affiliate has control with the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an approved custodian, including but not limited to the ownership of voting securities. In addition, a pledging bank shall not utilize the services of an approved custodian which is an office of the pledging bank or an affiliate or a subsidiary of the same bank holding company of which the pledging bank is a subsidiary or affiliate as defined in Iowa Code section 12C.22, subsection 1.

13.4(8) A pledging bank shall not use the safekeeping services of more than one approved custodian for the purposes of meeting the requirements of Iowa Code chapter 12C and this chapter.

13.4(9) A pledging bank shall notify the treasurer and the treasurer's approved custodian, in writing or via the treasurer's Web site, of any change in its name or charter location prior to the effective date of such change.

13.4(10) A pledging bank shall provide the treasurer's approved custodian with proper instructions for the delivery of cash and collateral which the treasurer's approved custodian has authorized for the release of collateral to the pledging bank.

781—13.5(12C) Requirements for becoming an approved custodian.

13.5(1) An approved custodian shall complete, sign, and submit to the treasurer an executed Master Custodial Agreement for the Deposit of Public Funds in Banks.

13.5(2) To become an approved custodian, a financial institution chartered outside the state of Iowa must submit a legal opinion acceptable to the treasurer prepared by counsel licensed to practice in the state in which the financial institution is principally located regarding the compatibility of Iowa Code chapter 554 with the uniform commercial code of the state in which the financial institution is principally located.

13.5(3) To be designated as an approved custodian, a financial institution must be capable of maintaining book-entry accounts with a Federal Reserve Bank and must be capable of safekeeping eligible collateral.

13.5(4) An approved custodian shall not hold pledged collateral for any pledging bank in which the approved custodian or an affiliate has control with the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a pledging bank, including but not limited to the ownership of voting securities. In addition, an approved custodian shall not hold pledged collateral for any pledging bank which is an office of the approved custodian or an affiliate or a subsidiary of the same bank holding company of which the approved custodian is a subsidiary or affiliate as defined in Iowa Code section 12C.22, subsection 1.

781—13.6(12C) Duties and responsibilities of an approved custodian.

13.6(1) An approved custodian shall accept only eligible collateral as defined in Iowa Code section 12C.22. Cash shall be considered eligible collateral.

13.6(2) An approved custodian shall segregate all collateral, maintaining open, notorious, continuous, active and exclusive possession of the collateral for the sole and exclusive benefit of the treasurer as an agent for public units.

13.6(3) An approved custodian shall permit the withdrawal, substitution, and addition of eligible pledged securities and other eligible pledged collateral upon receipt of the Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form from the pledging bank. However, before the approved custodian may act upon the written request of the pledging bank, the approved custodian shall verify that the pledging bank has completed and signed the above form and that the calculation of its total collateral market value, after the current withdrawals, substitutions, or additions, is equal to or exceeds its current total excess public funds.

13.6(4) An approved custodian shall issue to the treasurer, by regular mail on the same day, a joint receipt specifically describing and identifying any substituted or additional securities or other collateral pledged to the treasurer.

13.6(5) An approved custodian shall establish a fee schedule for its services. Any and all such fees shall be the sole responsibility of, and be billed directly to, the respective pledging bank. Under no circumstances will the treasurer be responsible or liable for any fees, charges, or expenses of an approved custodian.

13.6(6) In the event that the treasurer notifies an approved custodian of the default of a pledging bank, the approved custodian shall thereafter act only upon the treasurer's instructions with regard to any pledged collateral, cash, and Letters of Credit.

13.6(7) An approved custodian shall, no later than the twentieth day following the end of a calendar quarter, provide a written report to the treasurer in a format approved by the treasurer. The following items shall be provided for each pledging bank for which it serves as approved custodian:

- a. The pledging bank's name and its location.
- b. An inventory of all pledged collateral, as of the last day of the calendar quarter, which provides the CUSIP (the industry's numerical identification code given to each class and issue of security), description, coupon, maturity date, par amount, and market value of each security pledged by each pledging bank.
- c. The total par amount and the total market value of all pledged collateral as of the last day of the calendar quarter for each pledging bank.

d. A history providing the CUSIP, description, coupon, maturity date, par amount, market value and date of all additions, substitutions and withdrawals of pledged collateral during the calendar quarter for each pledging bank.

13.6(8) The approved custodian shall also provide such additional information and reports to the treasurer and the superintendent as they or either of them shall request at any time.

781—13.7(12C) Withdrawals, substitutions, and additions of pledged collateral.

13.7(1) A pledging bank shall pledge and maintain eligible collateral with the treasurer's approved custodian, the market value of which at all times equals or exceeds the amount by which the public funds deposits in the pledging bank exceed the total capital of the pledging bank.

13.7(2) A pledging bank shall complete, sign, and submit to the approved custodian a Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form for all withdrawals, substitutions or additions of eligible pledged collateral. Any withdrawals, substitutions or additions of eligible pledged collateral are conditional upon the pledging bank's correct calculation that its total collateral market value amount, after the current withdrawals, substitutions, or additions, is equal to or exceeds its current total excess public funds.

13.7(3) The approved custodian will issue its joint receipt of custody to the treasurer and to the pledging bank evidencing the substitution for or the addition of pledged collateral under the Master Custodial Agreement for the Deposit of Public Funds in Banks.

13.7(4) If a pledged security matures, then the principal amount of the cash shall be held in trust by the approved custodian for the treasurer until the pledging bank completes, signs, and submits a Certificate and Approval for Withdrawal, Substitution or Addition of Collateral form to the approved custodian to release the cash. Any withdrawal of cash is conditional upon the pledging bank's correct calculation that its total collateral market value amount, after the current withdrawal of cash, is equal to or exceeds its current total excess public funds.

13.7(5) Any request by a pledging bank to an approved custodian for the withdrawal or substitution of pledged collateral is conditional upon the approved custodian's receiving proper delivery instructions from the pledging bank for the pledged collateral being released. Furthermore, the release of pledged collateral in a transaction in which substituted collateral is to be pledged in lieu of pledged collateral which is being withdrawn is conditional upon the approved custodian's receiving the substituted collateral before releasing the pledged collateral.

13.7(6) Under no circumstance shall the treasurer be liable for any loss incurred to a pledging bank for failing to release pledged collateral. The treasurer is not liable for any loss incurred by a pledging bank as a result of the pledging bank's failure to substitute new collateral for any pledged collateral which matures.

781—13.8(12C) Eligible collateral provisions.

13.8(1) Pledged collateral shall be one or more of those securities or other items of collateral specified in 781—13.2(12C), definition of "eligible collateral," and shall be acceptable to the treasurer.

13.8(2) The acceptance of a security or other items as collateral by the approved custodian does not prevent the treasurer from requiring substitution of such security or other items at a later time as a result of statutory amendment or other changes or circumstances which affect the valuation, marketability, liquidity, ownership, or perfectibility.

781—13.9(12C) Suspension or termination of approved custodian designation.

13.9(1) An approved custodian may request in writing that the treasurer remove its designation as an approved custodian. Following such a written request, the Master Custodial Agreement for the Deposit of Public Funds in Banks shall terminate pursuant to the terms of those agreements provided; however, no such agreement shall terminate until the pledging bank(s) has secured the services of another approved custodian and all pledged collateral has been properly withdrawn and placed in safekeeping with the successor custodian.

13.9(2) If the treasurer determines that an approved custodian has violated any provisions of Iowa Code chapter 12C, or any other documents or agreements as prescribed by the treasurer, or has failed to fulfill its duties or otherwise committed a breach or default as set out in the Master Custodial Agreement for the Deposit of Public Funds in Banks, the treasurer may immediately suspend or terminate an approved custodian's designation as an approved custodian. The treasurer shall provide the suspended or terminated approved custodian with written notice of its suspension or termination. Upon suspension or termination, each pledging bank utilizing the services of the suspended or terminated approved custodian shall immediately secure the services of another approved custodian, and all pledged collateral shall be immediately withdrawn and placed in safekeeping with the successor approved custodian.

781—13.10(12C) Sale or merger of an approved custodian. If a pledging bank acquires control, direct or indirect, or ownership of its approved custodian, or the approved custodian acquires control, direct or indirect, or ownership of a pledging bank for which it is holding pledged collateral, or if a holding company will become owner of both the approved custodian and the pledging bank, the approved custodian shall immediately notify the treasurer in writing. Each pledging bank that utilizes the services of the approved custodian over which it has acquired control or that is now controlled by the approved custodian shall immediately secure the services of another approved custodian, and all pledged collateral shall be immediately withdrawn and placed in safekeeping with the successor approved custodian.

781—13.11(12C) Suspension or termination.

13.11(1) If the treasurer determines that a pledging bank has violated any provisions of Iowa Code chapter 12C, or any other documents or agreements as prescribed by the treasurer, or has failed to fulfill its duties or otherwise committed a breach or default as set out in the Pledge and Security Agreement or the Securities Account Control Agreement, or applicable federal deposit insurance coverage is suspended or terminated, the treasurer may immediately suspend or terminate a pledging bank's ability to accept uninsured public funds. The treasurer shall provide the suspended or terminated bank and the superintendent with written notice of its suspension or termination. Upon suspension or termination, all uninsured public funds held by the suspended or terminated pledging bank in excess of federal deposit insurance coverage shall be immediately remitted, with interest, to the applicable public unit(s).

13.11(2) Public units having public funds on deposit at a terminated or suspended pledging bank shall be notified of the termination or suspension of a pledging bank by notices included in the monthly rate-setting notice posted on the treasurer's Web site.

781—13.12(12C) Sale or merger of a pledging bank.

13.12(1) The responsibility of a pledging bank to pledge collateral for the security of the uninsured public funds in banks shall not be altered by any merger, takeover, or acquisition, except to the extent that such duty is assumed by the successor entity. No assets shall be released to the successor entity until collateral of an equal value is substituted or all excess public funds are withdrawn from the successor entity.

13.12(2) A pledging bank shall notify the treasurer and the approved custodian, in writing, of its merger, takeover or acquisition by a successor entity prior to the effective date of such an event.

781—13.13(12C) Procedures upon default or closing of a bank.

13.13(1) The acceptance of public funds by a bank constitutes agreement by the bank to pledge collateral as required by Iowa Code section 12C.22, consent by the bank to the disposition of the collateral, consent by the bank to assessments by the treasurer, and agreement by the bank to provide accurate information and to otherwise comply with the requirements of Iowa Code chapter 12C and this chapter.

13.13(2) The treasurer may liquidate the eligible collateral pledged by a pledging bank, including, without limitation, drawing on any Letter of Credit pledged as collateral to the treasurer by a pledging bank, if the treasurer verifies that any of the following have occurred:

a. A public unit notifies the treasurer, or the treasurer determines that said pledging bank has failed to pay a check, draft or warrant drawn by a public officer.

b. A pledging bank has acted contrary to or otherwise breached a term or condition of any agreement which it has entered into with a public unit, the treasurer or an approved custodian.

c. The pledging bank has failed to pay an assessment ordered by the treasurer as required in Iowa Code chapter 12C, or has, as determined by the treasurer, otherwise violated these rules or Iowa Code chapter 12C.

13.13(3) In the event that a pledging bank is closed by any state or federal regulatory officials, the treasurer may proceed to liquidate the collateral pledged by the closed pledging bank, including drawing on any Letters of Credit pledged to the treasurer by the closed pledging bank, notwithstanding the purchase and assumption of the closed pledging bank, and without the necessity of notice to the closed pledging bank, a successor receiver or an assuming entity. When a pledging bank accepts public funds, the pledging bank acknowledges and agrees that in the event of its closure or default, any eligible collateral is subject to unconditional sale or liquidation by the treasurer, with this condition and covenant inuring to and binding any receiver or successor in interest to the closed pledging bank.

13.13(4) In the event the deposits of a closed bank are not purchased and assumed by another bank, the public units with uninsured deposits in the pledging bank shall notify the treasurer of the amount of any claim within 30 days of the closing. The treasurer shall implement the following procedures:

a. The treasurer shall take such steps as are necessary to ensure that the approved custodian acts only upon the treasurer's instructions with regard to any pledged collateral.

b. The treasurer shall provide each public unit which has contacted the treasurer with a Statement of Accounts, a Public Depositor Claim Form, and a Release by Public Depositor. Included with these forms shall be instructions for completing and filing them and the estimated date when the treasurer will pay claims.

c. It shall be the duty and responsibility of each public unit with a potential claim to complete the above forms in cooperation with regulatory officials handling the closing of the pledging bank and to receive the signed confirmation of such officials as to the amount of the claim. The Statement of Accounts shall include the balances of all accounts on the date of closing, any amounts reimbursed by federal insurance coverage, and all interest accrued, at the applicable rate, on unreimbursed balances to the date of payment of claims and the amount of uninsured public funds on deposit. The Statement of Accounts and the Public Depositor Claim Form must be returned to the treasurer within 30 days of the date of the closing of the bank or from the date of receipt from the treasurer.

d. In cooperation with the responsible regulatory officials for the closed bank and the receipt of all Statements of Accounts and Public Depositor Claim Forms, the treasurer shall validate the amount of public funds deposit insurance coverage applicable to the public funds deposits of the closed bank. The treasurer may request that warrants be drawn on the state sinking fund for public funds deposits in banks to reimburse each public unit that has a verified claim.

e. Upon the specified date of payment of claims, warrants for the amounts of verified claims shall be delivered to the public units to the extent funds in the sinking fund are sufficient to cover public funds depositors' claims and expenses of the treasurer including, but not limited to, legal and administrative expenses. The public unit shall sign and deliver the Release by Public Depositor to the treasurer prior to receiving a warrant.

13.13(5) If the applicable deposit insurance, the liquidation of pledged collateral, or the funds received from drawing on any Letters of Credit, and the assets of the bank which are liquidated within 30 days of the closing of the bank are not sufficient to satisfy the loss to public units, then the treasurer shall obtain the additional amount needed to satisfy all remaining claims from the state sinking fund for public deposits in banks to the extent funds in the sinking fund are sufficient to cover public funds depositors' claims and expenses of the treasurer including, but not limited to, legal and administrative expenses.

13.13(6) If the funds in the sinking fund for public deposits in banks are inadequate to cover the remaining loss, the treasurer shall make assessments against all remaining banks whose public funds deposits exceed federal deposit insurance coverage to satisfy the remaining loss. The assessment against

each bank shall be calculated pursuant to Iowa Code chapter 12C and shall be paid by each bank to the treasurer within three business days of the bank's receipt of the treasurer's written assessment notice. If a pledging bank refuses or fails to pay its assessment when due, the treasurer shall satisfy the assessment in whole or in part by liquidating the collateral pledged by any pledging bank or drawing on any Letters of Credit which were pledged as collateral by that pledging bank.

13.13(7) If a pledging bank refuses or fails to pay any assessment and the liquidation of collateral pledged by that pledging bank or the funds received from drawing upon any Letters of Credit pledged as collateral by the pledging bank are not sufficient to satisfy the assessment, the treasurer shall make additional assessments as necessary against other banks which hold uninsured public funds deposits to satisfy any unpaid assessment. Additional assessments shall be determined, collected and satisfied in the same manner as the first assessment.

781—13.14(12C) Fees of the treasurer. The treasurer shall be entitled to reimbursement of all of the treasurer's actual and necessary costs and expenses incurred in the administration of Iowa Code chapter 12C and these rules including, but not limited to, legal expenses and administrative expenses. Such costs and expenses shall be reimbursed by withdrawal from the state sinking fund for public deposits in banks wherein a balance, acceptable to the treasurer and sufficient to meet legal and administrative expenses, shall be maintained. In the event at any time funds in the state sinking fund for public deposits in banks are not sufficient to pay any such reimbursement, the treasurer may make an assessment in the manner provided by Iowa Code section 12C.23A, subsection (3d), provided that no such assessment shall exceed the anticipated costs and expenses in the administration of Iowa Code chapter 12C and these rules for a period greater than one year after the assessment is made.

These rules are intended to implement Iowa Code chapter 12C.

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CHAPTER 14
DEPOSIT AND SECURITY OF PUBLIC FUNDS IN CREDIT UNIONS

781—14.1(12C) Scope and transition. Iowa Code chapter 12C grants authority to the treasurer of state to establish administrative rules and procedures to implement a system for securing deposits of public funds in banks, savings and loans and credit unions. This chapter contains rules which shall apply to the system for securing deposits of public funds in credit unions. Rules pertaining to securing public funds in savings and loans or federal savings banks are contained in 781—Chapter 3. Rules pertaining to the securing of public funds in banks are contained in 781—Chapter 13.

781—14.2(12C) Definitions. As used in this chapter:

“Approved custodian” means the Federal Home Loan Bank of Des Moines, Iowa, or the U.S. Central Credit Union.

“Credit union” means a credit union as defined in Iowa Code section 12C.1(2) *“e.”*

“Eligible collateral” means any of the securities specified in Iowa Code section 12C.16(1) *“b”* provided that the securities are acceptable to the public unit and to the approved custodian.

“Letter of credit” means an irrevocable, nontransferable, standby letter of credit issued directly to the public unit by the U.S. Central Credit Union or the Federal Home Loan Bank of Des Moines, Iowa.

“Market value” means the value of a pledged security calculated by using the average of the closing bid and ask price from a nationally recognized pricing source including, but not limited to, the Wall Street Journal, Bloomberg Financial Markets, Telerate, Reuter’s, or a nationally recognized broker dealer.

“Pledged collateral” or *“pledged securities”* means eligible collateral pledged by a credit union to a public unit to secure uninsured public deposits.

“Public units.” The state of Iowa, its cities, counties, school districts and all other political subdivisions of the state are public units under this chapter including but not limited to the following entities:

1. Cities.
2. Transit authorities.
3. Municipal utilities, including jointly owned.
4. Public libraries, city and regional.
5. Municipal housing programs.
6. Solid waste agencies.
7. Waterworks.
8. City cemeteries.
9. County offices including treasurers, recorders, clerks of court, sheriffs and auditors.
10. Townships.
11. County fair boards.
12. Regional planning agencies.
13. County care facilities.
14. County hospitals.
15. County conservation boards.
16. Sanitary districts.
17. Treasurer of state.
18. Iowa beer and liquor control department.
19. Iowa department of transportation.
20. Judicial district department of correctional services.
21. Iowa finance authority.
22. Iowa family farm development authority.
23. Iowa railway finance authority.
24. State board of regents.
25. State fair board.
26. State commerce commission.

27. State racing commission.
28. Iowa college aid commission.
29. Iowa higher education loan authority.
30. School districts.
31. Area education agencies.
32. Community action programs.
33. Community colleges.

Federal agencies, or political subdivisions thereof, are not public units under this chapter. Cooperatives, police and fire pension funds deposited for the benefit of the beneficiaries and fully covered by federal insurance, and bond sinking funds deposited pursuant to a bond covenant and which are fully covered by federal insurance are not public units.

“Treasurer” as used in this chapter shall mean the treasurer of the state of Iowa.

“Uninsured public funds” or *“uninsured public deposits”* means the funds of a public unit deposited in a credit union which are not federally insured, together with any accrued interest thereon.

781—14.3(12C) Forms. Forms utilized by credit unions in connection with the operation of this chapter shall be approved by the treasurer.

781—14.4(12C) Uninsured public deposits in credit unions. Uninsured public deposits in a credit union shall be secured by a letter of credit and a deposit agreement between the public unit and the credit union. (The credit union will only be allowed to aggregate funds deposited by the same public unit. Prior to accepting an uninsured public deposit, a credit union must secure the deposit according to requirements contained in this chapter.)

781—14.5(12C) Securing uninsured public deposits in credit unions using a letter of credit.

14.5(1) A credit union shall secure the uninsured public time deposits of a public unit with a letter of credit as defined in these rules and Iowa Code section 12C.16.

14.5(2) The public unit shall have in its possession, prior to or simultaneously at the time of deposit of uninsured public deposits, a letter of credit issued by the U.S. Central Credit Union or by the Federal Home Loan Bank of Des Moines, Iowa, to the public unit in an amount that is not less than 110 percent of the amount of public funds deposits to be secured thereby. The letter of credit shall have an expiration date which is at least ten business days later than the maturity date of the time deposit.

14.5(3) The public unit shall keep the letter of credit in a vault or a safe-deposit box in a financial institution other than the credit union until such time as the letter of credit expires or is presented for payment to the U.S. Central Credit Union or to the Federal Home Loan Bank of Des Moines, Iowa.

14.5(4) In the event that the public unit decides to extend the maturity of its deposit after the issuance of the letter of credit, the public unit shall obtain a new letter of credit. The new letter of credit must be obtained by the public unit prior to the original maturity date of the deposit.

14.5(5) If the credit rating of the U.S. Central Credit Union or the Federal Home Loan Bank of Des Moines, Iowa is lowered to a rating not within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking by rule pursuant to Iowa Code chapter 17A, then the U.S. Central Credit Union or the Federal Home Loan Bank of Des Moines, Iowa, shall immediately notify each credit union which is securing uninsured public deposits by use of a letter of credit issued by the U.S. Central Credit Union or the Federal Home Loan Bank of Des Moines, Iowa, and the treasurer. Each credit union, upon notification of the U.S. Central Credit Union or the Federal Home Loan Bank of Des Moines, Iowa, downgrade, shall immediately return the deposits, with interest accrued to that date, to the public units which are secured by a letter of credit.

781—14.6(12C) Securing public funds in a credit union with a pledge of eligible collateral.

14.6(1) Prior to accepting an uninsured public deposit, a credit union shall secure the uninsured public deposit in accordance with Iowa Code chapter 12C and these rules. The credit union must:

- a. Enter into a Security and Custodial Agreement for the Deposit of Public Funds in credit unions with the public unit and the approved custodian.
- b. Enter into a deposit agreement with the public unit.
- c. Deliver to the approved custodian eligible collateral with a market value of not less than 110 percent of the uninsured public deposits.

14.6(2) A credit union shall grant a security interest to the public unit in all pledged securities to secure the uninsured public funds of that public unit. The credit union shall take all steps necessary to ensure that the public unit has a valid, perfected, enforceable, first priority security interest in the pledged collateral. The credit union shall enter into a security agreement with the public unit and the approved custodian, and shall transfer pledged collateral to the approved custodian which shall hold the pledged collateral in safekeeping for the public unit.

14.6(3) The credit union shall maintain eligible collateral with the approved custodian with a total market value of not less than 110 percent of a public unit's total deposits which are not otherwise secured by a letter of credit.

14.6(4) A credit union shall promptly forward to the approved custodian payment for fees associated with the approved custodian's services as safekeeping agent for the public unit upon receipt of a statement from the approved custodian.

14.6(5) A credit union shall not attempt to withdraw pledged collateral from the approved custodian if such action will cause the total market value of pledged collateral to fall below 110 percent of a public unit's total uninsured deposits which are not otherwise secured by a letter of credit.

14.6(6) A credit union shall notify the public unit and the approved custodian in writing and 30 days prior to any change in its name or home office location.

14.6(7) A credit union shall receive written approval from the public unit for the withdrawal or substitution of any pledged collateral by completing the Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities and delivering it to the public unit with the request for the public unit's written approval to withdraw or substitute pledged securities. The public unit, if it approves of the withdrawal or substitution of pledged securities, shall forward the completed form to the approved custodian.

14.6(8) Any request by a credit union to withdraw pledged securities or to substitute securities which will result in a total market value of less than 110 percent of the public unit's public deposits, which are not otherwise secured by a letter of credit, shall be denied by the public unit.

14.6(9) The approved custodian shall comply with a credit union's request for the withdrawal, substitution or addition of pledged collateral when it receives a completed Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities containing the authorized signatures of the public unit and the credit union.

14.6(10) The approved custodian will issue a Joint Receipt of Custody to the public unit and to the credit union evidencing the pledge of any securities under the security agreement between the public unit and the credit union. In the event of substitution or exchange of securities, the approved custodian shall forward by mail to the public unit a Joint Receipt of Custody.

14.6(11) If a pledged security matures, then the principal amount of the cash must be held in trust by the approved custodian for the public unit until the public unit has determined that releasing the cash will not cause the total market value of all pledged securities by the credit union to fall below the 110 percent requirement.

14.6(12) The securities used to secure the uninsured public deposits in credit unions shall be acceptable to the public unit and the approved custodian and shall be one or more of those securities specified in rule 14.2(12C) of this chapter under the definition of "eligible collateral."

14.6(13) The public unit or the approved custodian has the right to refuse any security offered as collateral, notwithstanding its inclusion in Iowa Code section 12C.16(1) "b" or these rules, for reasons relating to difficulty of valuation, uncertainty as to the ability to sell a security in the event of default, questions as to ownership, or impossibility of creating a valid and perfected security interest in favor of the public unit.

14.6(14) The acceptance of a security as collateral by the approved custodian or the public unit does not prevent the public unit from requiring substitution of said security at a later time as a result of statutory or regulatory amendment or other changes which affect the valuation, marketability, liquidity, ownership, or perfectibility of the security or the enforceability of the public unit's security interest.

14.6(15) Securities which are issued in certificated or definitive form are eligible collateral only if they are registered in the name of the public unit's approved custodian or are in otherwise negotiable form acceptable to the public unit.

14.6(16) No security which requires any additional endorsement, assignment or power of attorney for liquidation is eligible collateral.

781—14.7(12C) Duties of the approved custodian.

14.7(1) An approved custodian shall enter into a Security and Custodial Agreement for the Deposit of Public Funds in credit unions with the public unit and the credit union.

14.7(2) An approved custodian shall accept only collateral which is eligible to be pledged under these rules.

14.7(3) An approved custodian shall segregate all collateral, maintaining open, notorious, continuous, active and exclusive possession of the collateral for the benefit of the public unit.

14.7(4) An approved custodian shall permit the withdrawal or substitution or addition of pledged securities only upon receipt of a Certification and Approval Form for the Withdrawal, Substitution or Addition of Pledged Securities, which contains the signatures of authorized persons representing the credit union and the public unit. Receipt of the authorization by facsimile transmission shall be adequate documentation to allow the approved custodian to release or accept pledged securities. The approved custodian shall implement procedures for documenting signatures of authorized persons of a credit union and the public unit.

14.7(5) An approved custodian shall issue a Joint Receipt of Custody to the public unit and the credit union each time a credit union substitutes new securities for pledged securities or a credit union pledges additional pledged securities.

14.7(6) An approved custodian shall establish a fee schedule for its services. Any and all such fees shall be the responsibility of, and be paid by, the respective credit union.

14.7(7) In the event that the public unit notifies an approved custodian of the default of a credit union, it shall thereafter act only upon the public unit's instructions with regard to any pledged securities.

14.7(8) An approved custodian shall, no later than the twentieth day of each month, provide a written report to those public units for which it serves as approved custodian. The following items shall be provided in the report.

a. The name of the credit union which has pledged securities to secure the uninsured public funds of the public unit.

b. An inventory of all pledged securities as of the last day of the preceding month which provides a description of the pledged securities and the par amount, maturity date, and market value of each.

c. The total par value and market value of all pledged securities as of the last day of the preceding month.

14.7(9) An approved custodian shall determine the market values of pledged securities as of the last day of the month for purposes of reporting to the public unit.

781—14.8(12C) Termination of credit union's federal insurance. In the event that a credit union's applicable federal deposit insurance is suspended or terminated, the credit union must notify the public unit immediately and shall immediately return all deposits to the public unit with accrued interest.

781—14.9(12C) Sale or merger of a credit union. The responsibility of a credit union to secure public deposits by a letter of credit shall not be altered by any merger, takeover or acquisition, except to the extent that such duty is assumed by the successor entity. A credit union shall immediately notify the public unit, in writing, of its merger, takeover or acquisition by a successor entity.

781—14.10(12C) Procedure upon default.

14.10(1) The acceptance of public funds by a credit union constitutes consent by the credit union to assessments to cover losses of public funds in other credit unions by the treasurer in accordance with Iowa Code section 12C.23 and the rules contained in this chapter.

14.10(2) The treasurer, upon notification from a public unit that a public unit has not been completely repaid its principal and interest for a deposit and that funds are not available from a letter of credit securing such deposit, shall assess all credit unions in the state with public deposits as provided in Iowa Code section 12C.23.

14.10(3) A credit union and any security given for the public funds in its possession are liable for payment if the credit union fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order or certificates of deposit, or any public funds entrusted to it if, in failing to pay, the credit union acts contrary to the terms of an agreement between the credit union and the public body treasurer or, if the credit union fails to pay an assessment by the treasurer of state, when due.

These rules are intended to implement Iowa Code chapter 12C.

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CHAPTER 15
REQUIRED PUBLIC FUNDS CUSTODIAL AGREEMENT PROVISIONS

781—15.1(12B) Scope.

15.1(1) Iowa Code section 12B.10C requires the treasurer of state to adopt rules requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds. A public funds custodial agreement is defined in Iowa Code section 12B.10C as any contractual agreement pursuant to which one or more persons including, but not limited to, investment advisors, investment companies, trustees, agents and custodians, are authorized to act as a custodian of or to designate another person to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments.

15.1(2) These rules shall apply to any public unit, as defined in 781—Chapter 13, which uses a public funds custodial agreement for the investment of public funds. Public funds are defined in Iowa Code section 12C.1(2) “b” as moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in Iowa Code section 12C.1(1); a legal or administrative entity created pursuant to Iowa Code chapter 28E; or an electric power agency as defined in Iowa Code section 28F.2.

15.1(3) A public unit may only enter into a contractual arrangement pursuant to which a person is authorized to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments (including the safekeeping of investments owned by a public unit) if that person is the trust or safekeeping department of a national or state bank located in the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa. Provided, however, the treasurer of state may exercise its discretion under Iowa Code section 12C.4 to enter into public funds custodial agreements with a custodian located outside the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal or state laws. Each public unit whose investments involve the use of a public funds custodial agreement shall require the inclusion in the public funds custodial agreement those provisions contained in rule 15.2(12B) of this chapter.

15.1(4) Investments of public funds invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness are not subject to these rules.

15.1(5) The public safety peace officers’ retirement system governed by Iowa Code chapter 97A, the Iowa public employees’ retirement system governed by Iowa Code chapter 97B, investments by the Iowa finance authority governed by Iowa Code chapter 16, the state fire and police retirement system governed by Iowa Code chapter 411, and the judicial retirement system governed by Iowa Code chapter 602, article 9, are not subject to these rules. These rules also do not apply to public funds custodial agreements entered into by the treasurer of state when such agreements are on behalf of any of the entities specified in this section.

15.1(6) These rules do not apply to custodial agreements between an open-end management investment company registered with the Federal Securities Exchange Commission under the Federal Investment Company Act of 1940, 15 U.S.C. Sec. 80(a) and a custodian bank.

15.1(7) These rules do not apply to custodial agreements entered into by a public unit or the treasurer of state for the purposes of securing public funds deposits under Iowa Code chapter 12C.

15.1(8) These rules do not apply to Treasury Direct accounts established by a public unit with a Federal Reserve Bank for the purpose of making direct purchases of United States Treasury bills, notes or bonds.

781—15.2(12B) Required provisions for inclusion in public funds custodial agreements. All public funds custodial agreements shall be in writing and shall include the following provisions:

15.2(1) The custodian shall represent and warrant that it lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa, unless such a custodian is located out of state and is used by the treasurer of state for purposes permitted in Iowa Code section 12C.4, and that it has the resources and expertise to act as the custodian of public funds or any security or document of ownership or title evidencing public funds investments and to perform its responsibilities under the public funds custodial agreement.

15.2(2) The scope of duties and services to be performed by the custodian shall be described in detail satisfactory to the public unit and shall include, as applicable, custodial, settlement, collection of income and investment proceeds, and securities valuation services.

15.2(3) The custodian shall agree to provide the public unit with receipts, advices or other written confirmation or acknowledgment of its custody, on behalf of the public unit, of all assets delivered to it for the account of the public unit and subject to the public funds custodial agreement.

15.2(4) The custodian shall agree to segregate public funds assets separate from bank assets and to maintain records adequate to describe the fiduciary capacity of the custodian and the ownership of the assets by the public unit.

15.2(5) The custodian shall agree to maintain adequate records regarding a description of the assets, all receipts, deliveries and locations of the assets, together with a current inventory thereof, all purchases and sales, all receipts and disbursements of cash and all debits and credits pertaining to transactions relating to the assets, including but not limited to interest payments. The custodian shall agree to conduct periodic inspections in order to verify the accuracy of the inventory, including the securities, if any, held by a subcustodian.

15.2(6) The custodian shall agree that all records of investment transactions, documentation, orders and reports, whether in written or machine-readable form, relating to the public funds custodial agreement and the services provided thereunder, regardless of who performs the services, shall be considered records of the public unit and open to inspection and examination by the public unit, its employees and its designees. To the extent records are maintained by others, the custodian shall agree to obtain from the other person an identical right to examination and inspection of the records and to obtain the information and records upon request of the public unit and to enforce its rights in order to obtain any records held by another person. The custodian shall agree to make all such records available upon reasonable request for inspection and audit by the public unit, its employees or designees, and to allow these records or excerpts of these records to be copied and removed to facilitate the audit or to comply with public records requirements.

15.2(7) If the custodian proposes to use a subcustodian or other agent to perform any services in connection with the public funds custodial agreement, the custodian shall agree that it shall be responsible for the acts or omissions of any subcustodians or other agent used as though the acts and omissions of any subcustodian or agent were the acts and omissions of the custodian.

15.2(8) The custodian shall agree that it will receive all assets purchased by or for the public unit from the persons through or from whom the same were purchased, and only upon receipt thereof (delivery versus payment basis) pay, out of assets held on account of the public unit, the total amount payable on the purchase as set forth in the instructions received by the custodian. The custodian shall agree to secure possession of all investment instruments that are the subject of or are the underlying obligations for any repurchase agreement.

15.2(9) The custodian shall agree that it will transfer assets for sale pursuant to instructions delivered to the custodian only upon receipt of the total amount payable to the public unit in connection with the settlement of the transaction, provided that the same conforms to the total amount payable to the public unit as shown in the instructions with respect to such sale. No assets may be delivered out of the account of the public unit without full payment (no "free deliveries" of investment securities shall be permitted).

15.2(10) If a public unit has engaged an investment advisor or investment manager, the public funds custodial agreement must limit the authority of the investment manager or advisor to authorizing a sale or purchase of an investment on a delivery versus payment basis pursuant to an instruction procedure which is consistent with the requirements of the public funds custodial agreement and the internal control

policies of the public unit. The public funds custodial agreement shall not permit an investment manager or investment advisor to deliver, transfer, or move cash or securities to another account, location or entity.

15.2(11) The delivery, transfer or movement of cash or securities held in custody for the public unit (except for trades on a delivery versus payment basis) shall only be made pursuant to instructions given to the custodian by the treasurer of the public unit, or other employees designated by the treasurer, consistent with the internal controls established by the public unit.

15.2(12) The public funds custodial agreement shall specify in satisfactory detail the procedures for instructions to be furnished to the custodian in connection with the sales or purchases of securities and the delivery, transfer or movement of cash or securities held in the custody account. The instruction provisions must be consistent with the internal control policies established by the public unit. At a minimum, these procedures must certify the individual or individuals authorized to issue instructions, the scope of their authority, require current specimen signatures of authorized individuals to be maintained by the custodian and require written instructions to be furnished to the custodian. If oral instructions are permitted, the procedures or protocol for them must be specified in detail and must address verification and confirmation procedures and follow-up written instructions required by the custodian and the public unit.

15.2(13) At a minimum, the public funds custodial agreement shall require the custodian to furnish the following reports to the public unit: A monthly report describing in satisfactory detail the inventory of the account and transaction history during the preceding month; other reports at such times as may be adequate to satisfy the public unit's internal control procedures for reconciliation; and written notice to the public unit within 30 days of receipt of all communications from the person performing the audit of the custodian or any regulatory authority of a material weakness in internal control structure, or regulatory orders or sanctions against the custodian, with regard to the services being performed under the public funds custodial agreement.

15.2(14) The custodian shall agree to furnish to the public unit the audited financial statements and related report on internal control structure as required by Iowa Code section 11.6(1)“b”(2) as amended and recodified from time to time.

15.2(15) The public funds custodial agreement shall not provide for the compensation of the custodian based on investment performance.

15.2(16) The custodian shall agree to comply with all applicable federal laws and regulations and all applicable laws and administrative rules of the state of Iowa, including all amendments to laws, regulations and rules adopted following the execution and delivery of the public funds custodial agreement at any time during the term of the public funds custodial agreement.

15.2(17) The public funds custodial agreement shall require that all investments shall be made in accordance with the laws of the state of Iowa, as then in effect.

15.2(18) At a minimum, the custodian shall agree to exercise the standard of care expected of a prudent professional custodian of public funds in holding, maintaining and servicing the securities and cash under the public funds custodial agreement.

15.2(19) The provisions described in these rules shall not be limited or avoided by other contractual provisions in the public funds custodial agreement.

15.2(20) Any provisions limiting the liability of the custodian shall not relieve the custodian of liability as a result of its own negligence, lack of good faith or willful misconduct.

15.2(21) If the custodian intends to perform services pursuant to the public funds custodial agreement in its safekeeping department, the custodian shall represent and warrant that it performs similar services for other customers in its safekeeping department.

781—15.3(12B) Optional provisions which public units should consider. The provisions set forth in rule 15.2(12B) are minimum requirements and are not exclusive. A public unit should determine whether the services performed by the custodian pursuant to the agreement will be performed in the safekeeping department or the trust department and, based upon the advice of its counsel, should also consider other appropriate or more favorable provisions that may customarily be included in a public funds custodial agreement. Such things include, but are not limited to: additional representations

and warranties; agreements or covenants pertaining to insurance and fidelity bond of the custodian and its employees; permitted use of subcustodians; adequate description of fees and expenses and billing procedures; the requirement of additional reports including advices of transactions; conditions to the effectiveness of the public funds custodial agreement regarding deliveries of related documents and certificates; a higher standard of care; the ability of the public unit to terminate the public funds custodial agreement on a short-term basis without cause; and indemnification and default provisions, including recovery of attorneys' fees.

781—15.4(12B) Custodial functions. The required provisions contained in rule 15.2(12B) address only custodial functions and do not purport to address discretionary authority pertaining to the investments which shall be set forth in a separate written contract with the investment manager or advisor.

781—15.5(12B) Implementation deadline. Public units shall have until January 31, 1993, to incorporate the required provisions contained in rule 15.2(12B) into existing public funds custodial agreements. Any new public funds custodial agreement executed after the effective date of these rules shall contain the provisions of rule 15.2(12B).

These rules are intended to implement Iowa Code section 12B.10C.

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CHAPTER 16
IOWA EDUCATIONAL SAVINGS PLAN TRUST

781—16.1(12D) Purpose. The purpose of these rules is to provide for the administration and operation of the Iowa educational savings plan trust.

781—16.2(12D) Definitions. In addition to the terms defined in Iowa Code section 12D.1, the following terms apply to this chapter:

“*Academic period*” means one semester or one quarter or such other equivalent period as may be defined by the qualified institution of higher education.

“*Account*” means an account established and maintained under the Iowa educational savings plan trust for a beneficiary.

“*Account balance*” means the fair market value of an account.

“*College savings Iowa*” means the name and logo registered under Iowa law to represent the direct-sold Iowa 529 plan under the Iowa educational savings plan trust.

“*Iowa 529 plan*” means college savings Iowa, the Iowa advisor 529 plan, and any other college savings plan established by the program administrator, collectively, under the Iowa educational savings plan trust.

“*Iowa advisor 529 plan*” means the name and logo registered to represent the advisor-sold Iowa 529 plan under the Iowa educational savings plan trust.

“*Payments*” means the money paid by the participant to the trust under the participation agreement.

“*Plan*” means either (1) college savings Iowa, (2) Iowa advisor 529 plan, or (3) any other college savings plan established by the program administrator under the Iowa educational savings plan trust.

“*Program administrator*” means the treasurer of state.

“*Program description*” means the description of each plan provided to participants setting forth information with respect to the plan.

“*Qualified higher education costs*” means tuition, fees, and the cost of books, supplies and equipment required for the enrollment or attendance of the beneficiary at a qualified institution of higher education. Room and board shall be treated as qualified higher education costs for a beneficiary, subject to maximum annual dollar amounts determined by the program administrator, if room and board are incurred during an academic period in which the beneficiary is enrolled or accepted for enrollment in a degree, certificate or other program that leads to a recognized educational credential (such as a bachelor’s degree or an associate’s degree) awarded by a qualified institution of higher education. The beneficiary must be enrolled at least half-time for board expenses to be qualified.

“*Qualified institution of higher education*” means an institution described in Section 481 of the federal Higher Education Act of 1965 that is eligible to participate in the United States Department of Education’s student aid programs. State universities in Iowa and other states qualify, as do community colleges and private accredited four-year and two-year colleges. Some vocational and technical schools qualify as well.

781—16.3(12D) Participation agreement and program description. The following material shall be used to administer the Iowa educational savings plan trust.

16.3(1) “Participation agreement” means the form that the participant submits to the program administrator to identify the participant, beneficiary, plan, and other information that may be requested by the program administrator. The participation agreement shall be signed and dated by the participant to verify that the participant agrees to the terms and conditions of the program. For online applications, participants must confirm that they have read the terms and conditions prior to submitting the application.

16.3(2) Each plan will have a program description setting forth the terms of the plan and describing the investments and procedures applicable to that plan. Persons interested in a plan should consult the plan description. A plan description may be changed at any time by the program administrator, and any such change may impact the rights of participants and beneficiaries under the plan.

781—16.4(12D) Forms.

16.4(1) Appropriate forms must be completed in paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions listed. Current forms are available online at www.collegesavingsiowa.com for college savings Iowa and at www.iowaadvisor529.com for the Iowa advisor 529 plan. Actions which require the completion of an appropriate form include the following:

- a. Terminate a participation agreement.
- b. Transfer ownership rights of an Iowa 529 plan account to another person pursuant to Iowa Code section 12D.6(5).
- c. Request the substitution of a beneficiary.
- d. Exchange investments.
- e. Establish, delete or change automatic investments.
- f. Establish, delete or change banking information.
- g. Request a qualified withdrawal.
- h. Request an allocation update.
- i. Request for payroll deduction.
- j. Establish, delete or change electronic bank transfer information.
- k. Establish, delete or change interested party information.
- l. Establish, delete or change successor information.
- m. Change E-mail address on file.
- n. Change address on file.
- o. Request a rollover to another 529 plan.
- p. Establish, delete or change power of attorney on an account.
- q. Change beneficiary information on an account.

16.4(2) The program administrator may from time to time provide additional forms for use by participants and beneficiaries in connection with actions involving the Iowa 529 plan and will make those forms available online and in paper format.

781—16.5(12D) Participant eligibility. Iowa Code section 12D.3 provides that the trust may enter into participation agreements with participants to effectuate the purposes, objectives and provisions of the trust. This rule establishes the eligibility criteria for a participant.

16.5(1) A participant must be at least 18 years old and a resident of the United States.

16.5(2) A participant shall execute a participation agreement with the program administrator that specifies the plan selected by the participant and the terms and conditions under which the participant shall participate in the trust.

16.5(3) A participant shall, on signing a participation agreement, provide the program administrator with the participant's social security number.

781—16.6(12D) Beneficiary eligibility. A beneficiary of a participation agreement may be designated anytime after birth and assignment of a social security number. This rule establishes the eligibility criteria for a beneficiary.

16.6(1) A beneficiary may be a resident of any state.

16.6(2) A participant shall, on signing a participation agreement, provide the program administrator a valid social security number for the beneficiary.

781—16.7(12D) Payments and payment schedules. Iowa Code section 12D.3(1) states that participation agreements may require participants to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. This rule provides for implementation of this provision.

16.7(1) The program administrator will provide each participant a quarterly statement. Participants are allowed to make contributions at any time during the calendar year provided that each contribution is made in accordance with the minimum contribution and other requirements set forth in the program description.

16.7(2) The program administrator shall actuarially determine an account balance limit applicable to all accounts of each beneficiary. No additional payments may be made on behalf of a beneficiary if the account balances of all accounts held for the beneficiary exceed the applicable account balance limit.

16.7(3) Beginning in 2000 and each year thereafter, the program administrator shall determine the maximum amount that a participant may contribute and deduct from Iowa income taxes pursuant to Iowa Code chapter 422 on behalf of a beneficiary for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum shall be communicated to participants in Iowa 529 plans and to the public in any reasonable manner determined by the program administrator.

781—16.8(12D) Substitution or change of beneficiary. Iowa Code section 12D.3(3)“a” provides that beneficiaries may be changed subject to the rules and regulations of the treasurer of state. This rule establishes the criteria for substituting one beneficiary for another. Beneficiary changes shall also be subject to the procedures set forth in the applicable program description.

16.8(1) At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—16.6(12D) and must be a member of the family of the beneficiary being substituted as defined by the IRS. That definition may be found at Internal Revenue Code Section 529(e).

16.8(2) A participant may request that a beneficiary be substituted by submitting the appropriate form to the program administrator.

781—16.9(12D) Change of participant or account owner. The participant is the initial owner of the account established under an Iowa 529 plan and, as such, has the exclusive right to cancel the participation agreement or change the designated beneficiary in accordance with these rules and the applicable program description.

16.9(1) A participant may transfer the participant’s current ownership rights in an account to another eligible individual or to a minor beneficiary. To do so, the participant shall complete the appropriate form.

16.9(2) A participant may also designate on the participation agreement a successor, who shall succeed to the ownership of the account in the event of the death of the participant. A participant may change the designated successor by completing the appropriate form.

16.9(3) In the event a participant or other account owner dies and has not designated a successor to the account, the following criteria will be used.

a. The designated beneficiary, if 18 years of age or older at the time of the participant’s death, shall become the owner of the Iowa 529 plan account as well as remaining the beneficiary.

b. If the designated beneficiary is under the age of 18, account ownership will be transferred to the beneficiary’s surviving parent or other legal guardian.

16.9(4) The participant may name a successor to the account even though the successor may already have established or may have plans to establish an Iowa 529 plan account.

781—16.10(12D) Payment of benefits and qualified distributions. This rule establishes the procedures for the payment of benefits.

16.10(1) The participant must initiate distributions for qualified or nonqualified expenses. The participant must file the appropriate form with the program administrator.

16.10(2) Benefits will be paid in one of three ways once the request has been received by the program administrator:

a. Directly to the institution of higher education for qualified expenses only.

b. Directly to the participant for qualified or nonqualified expenses.

c. Directly to the beneficiary for qualified expenses only.

16.10(3) Each distribution of benefits will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the participant’s account at the time of the distribution.

16.10(4) Funds that are distributed to a participant pursuant to this rule shall be reported to the IRS on a 1099Q in the tax year in which such distribution is made. The participant will receive the 1099Q for any distributions made to the participant. The beneficiary will receive the 1099Q for any distributions

made to the beneficiary or institution of higher education. The individual receiving the 1099Q must determine whether the distribution was qualified or nonqualified. Nonqualified distributions may be subject to state and federal taxes and penalties.

16.10(5) A participant may transfer any remaining balance in one account to an existing or new account for another designated beneficiary by completing a new participation agreement with the program administrator.

781—16.11(12D) Withdrawals and cancellation. Iowa Code section 12D.5 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for withdrawals from or the cancellation of a participation agreement.

16.11(1) A participant may at any time withdraw a portion of the amount in an account or cancel a participation agreement, without cause, by submitting to the program administrator the appropriate form.

16.11(2) If the participation agreement is canceled, the participant is entitled to the amount in the account, subject to any applicable fees and expenses. The balance shall be mailed or otherwise sent to the participant after receipt by the program administrator of the appropriate form.

16.11(3) Funds that are distributed to a participant pursuant to this rule shall be reported to the IRS on a 1099Q in the tax year in which such distribution is made. The participant will receive the 1099Q for any distributions made to the participant. The beneficiary will receive the 1099Q for any distributions made to the beneficiary or institution of higher education. The individual receiving the 1099Q must determine whether the distribution was qualified or nonqualified. Nonqualified distributions may be subject to state and federal taxes and penalties.

16.11(4) Pursuant to Iowa Code section 642.2, funds held by the program administrator under the Iowa 529 plan are not subject to garnishment.

These rules are intended to implement Iowa Code chapter 12D.

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CHAPTER 17
DECLARATORY ORDERS

781—17.1(17A) Petition for declaratory order. Any person may file a petition with the department of the treasurer of state for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department of treasurer of state at Treasurer of State, State Capitol Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The department of the treasurer of state shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

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

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 17.7(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.

781—17.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department of the treasurer of state shall give notice of the petition to all persons not served by the petitioner pursuant to 17.6(17A) to whom notice is required by any provision of law. The department of the treasurer of state may also give notice to any other persons.

781—17.3(17A) Intervention.

17.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 25 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

17.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department of the treasurer of state.

17.3(3) A petition for intervention shall be filed at the department of the treasurer of state at Treasurer of State, State Capitol Building, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The department of the treasurer of state will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

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

The petition for intervention must provide the following information:

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

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

781—17.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of the treasurer of state may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

781—17.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Department of the Treasurer of State, State Capitol Building, Des Moines, Iowa 50319.

781—17.6(17A) Service and filing of petitions and other papers.

17.6(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.

17.6(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 department of the treasurer of state at Treasurer of State, State Capitol Building, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department of the treasurer of state.

17.6(3) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

17.6(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the department of the treasurer of state, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

17.6(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

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

(Date)

(Signature)

781—17.7(17A) Consideration. Upon request by petitioner, the department of the treasurer of state must schedule a brief and informal meeting between the original petitioner, all intervenors, and the treasurer of state, or a member of the staff of the treasurer of state, to discuss the questions raised. The department of the treasurer of state may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department of the treasurer of state by any person.

781—17.8(17A) Action on petition.

17.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the treasurer of state or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

17.8(2) The date of issuance of an order or of a refusal to issue an order means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

781—17.9(17A) Refusal to issue order.

17.9(1) The department of the treasurer of state 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 of the treasurer of state to issue an order.
3. The department of the treasurer of state does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the department of the treasurer of state to determine whether a statute is unconstitutional on its face.

17.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

17.9(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.

781—17.10(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.

781—17.11(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.

781—17.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department of the treasurer of state, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department of the treasurer of state. The issuance of a declaratory order constitutes final agency action on the petition.

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

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CHAPTER 18
AGENCY PROCEDURE FOR RULE MAKING

781—18.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

781—18.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency 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 agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

781—18.3(17A) Public rule-making docket.

18.3(1) Docket maintained. The agency shall maintain a current public rule-making docket.

18.3(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 agency. 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 department of the treasurer of state for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

18.3(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 agency determinations with respect thereto;
- h. Any known timetable for agency 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.

781—18.4(17A) Notice of proposed rule making.

18.4(1) Contents. At least 35 days before the adoption of a rule the agency 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 agency 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 agency for the resolution of each of those issues.

18.4(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 18.12(2) of this chapter.

18.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the agency 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 agency 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 agency 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 six months.

781—18.5(17A) Public participation.

18.5(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 Department of the Treasurer of State, State Capitol Building, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

18.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency 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 agency 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.

18.5(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. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

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

on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency 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 agency 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 agency 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 agency.

(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.

18.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

18.5(5) Accessibility. The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the treasurer of state at (515) 281-5368 in advance to arrange access or other needed services.

781—18.6(17A) Regulatory analysis.

18.6(1) Definition of small business. A “small business” is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

18.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the agency’s small business impact list by making a written application addressed to Treasurer of State, State Capitol Building, Des Moines, Iowa 50319. 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 agency 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 agency 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.

18.6(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 agency 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 agency 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.

18.6(4) *Qualified requesters for regulatory analysis—economic impact.* The agency 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;
- b. The administrative rules review committee.

18.6(5) *Qualified requesters for regulatory analysis—business impact.* The agency 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;
- 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.

18.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

18.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

18.6(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).

18.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

18.6(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(2a), unless a written request expressly waives one or more of the items listed in the section.

18.6(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).

781—18.7(17A,25B) Fiscal impact statement.

18.7(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.

18.7(2) If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

781—18.8(17A) Time and manner of rule adoption.

18.8(1) *Time of adoption.* The agency 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 oral proceedings thereon, the agency 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.

18.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency 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.

18.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

781—18.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

18.9(1) The agency 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.

18.9(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 agency 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.

18.9(3) The agency 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 agency 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.

18.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

781—18.10(17A) Exemptions from public rule-making procedures.

18.10(1) *Omission of notice and comment.* To the extent the agency 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 agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

18.10(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.

18.10(3) *Public proceedings on rules adopted without them.* The agency 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 18.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 18.10(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 agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 18.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

781—18.11(17A) Concise statement of reasons.

18.11(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 agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Treasurer of State, State Capitol Building, 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.

18.11(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 agency's reasons for overruling the arguments made against the rule.

18.11(3) *Time of issuance.* After a proper request, the agency 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.

781—18.12(17A) Contents, style, and form of rule.

18.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

- a. The date the agency 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 agency in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in

the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the agency in its discretion decides to include such reasons; and

g. The effective date of the rule.

18.12(2) *Incorporation by reference.* The agency 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 agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency 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 agency may incorporate such matter by reference in a proposed or adopted rule only if the agency 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 this agency, 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 agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency 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.

18.12(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 agency 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 agency. The agency 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 agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

18.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

781—18.13(17A) Agency rule-making record.

18.13(1) *Requirement.* The agency 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.

18.13(2) *Contents.* The agency 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 agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency'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 agency, 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 agency and considered by the treasurer of state, 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 agency 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 agency 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 agency 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.

18.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

18.13(4) *Maintenance of record. The agency 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 18.13(2) “*g,*” “*h,*” “*i,*” or “*j.*”

(Alternatively, the agency can maintain the file indefinitely.)

(*NOTE: Alternatively to 18.13(2) “*j*” and the amendment to 18.13(4), an agency could keep a separate file of significant written criticisms to rules and maintain those for five years.)

781—18.14(17A) *Filing of rules.* The agency 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 agency shall use the standard form prescribed by the administrative rules coordinator.

781—18.15(17A) *Effectiveness of rules prior to publication.*

18.15(1) *Grounds.* The agency 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 agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

18.15(2) *Special notice.* When the agency 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 agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the agency 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 agency 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 18.15(2).

781—18.16(17A) General statements of policy.

18.16(1) *Compilation, indexing, public inspection.* The agency 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.

18.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 18.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

781—18.17(17A) Review by agency of rules.

18.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency 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 agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

18.17(2) In conducting the formal review, the agency 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 agency’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 agency or granted by the agency. 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 agency’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

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

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CHAPTER 19
WAIVER AND VARIANCE RULES

781—19.1(17A) Definition. For purposes of this chapter, a “waiver” or “variance” means action by the agency which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

781—19.2(17A) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the agency in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

781—19.3(17A) Applicability. The agency may grant a waiver from a rule only if the agency has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The agency may not waive requirements created or duties imposed by statute.

781—19.4(17A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 19.6(17A), the agency may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

781—19.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the agency as follows:

19.5(1) License or authorization application. If the petition relates to a license or authorization application, the petition shall be made in accordance with the filing requirements for the license or authorization in question.

19.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

19.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition shall be submitted in writing to the treasurer of state’s office.

781—19.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. All relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 19.4(17A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the agency and the petitioner relating to the regulated activity, license, or authorization affected by the proposed waiver, including a description of each

affected license or authorization held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. All information known to the requester regarding the agency's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the agency with information relevant to the waiver.

781—19.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the agency may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the agency may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the treasurer of state, or their designees, a committee of the agency, or a quorum of the agency.

781—19.8(17A) Notice. The agency shall acknowledge a petition upon receipt. The agency shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the agency may give notice to other persons. To accomplish this notice provision, the agency may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the agency attesting that notice has been provided.

781—19.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the agency so provides by rule or order or is required to do so by statute.

781—19.10(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

19.10(1) Agency discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the agency, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the agency based on the unique, individual circumstances set out in the petition.

19.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the agency should exercise its discretion to grant a waiver from an agency rule.

19.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

19.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the agency shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

19.10(5) Conditions. The agency may place any condition on a waiver that the agency finds desirable to protect the public health, safety, and welfare.

19.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the agency, a waiver may be renewed if the agency finds that grounds for a waiver continue to exist.

19.10(7) *Time for ruling.* The agency shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

19.10(8) *When deemed denied.* Failure of the agency to grant or deny a petition within the required time period shall be deemed a denial of that petition by the agency. However, the agency shall remain responsible for issuing an order denying a waiver.

19.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

781—19.11(17A) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the agency is authorized or required to keep confidential. The agency may accordingly redact confidential information from petitions or orders prior to public inspection.

781—19.12(17A) Summary reports. Semiannually, the agency shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the agency's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

781—19.13(17A) Cancellation of a waiver. A waiver issued by the agency pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the agency issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

781—19.14(17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

781—19.15(17A) Defense. After the agency issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

781—19.16(17A) Judicial review. Judicial review of the agency's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A.

[Filed 12/7/01, Notice 8/8/01—published 12/26/01, effective 1/30/02]

CHAPTER 20
FAIRGROUNDS INFRASTRUCTURE GRANT PROGRAM

781—20.1(12) Fairgrounds infrastructure grant program. An independent fairgrounds infrastructure grant program is established in the department, with the funds provided from the fairgrounds infrastructure aid fund established in the state treasury and under the authority of the department.

[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.2(12) Purpose. The purpose of the fairgrounds infrastructure grant program is to establish the procedures and guidelines for the distribution of department funding for infrastructure improvements to qualified fairs that belong to the Association of Iowa Fairs. No grant shall be awarded for less than \$5,000 or more than \$50,000 during any fiscal year. The department shall issue awards in accordance with the availability of moneys in the fairgrounds infrastructure aid fund.

[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.3(12) Definitions. In addition to the terms defined in Iowa Code section 174.1, the following terms, when used in this chapter, shall have the following meanings, unless the context otherwise requires:

“*Department*” means the office of the treasurer of state.

“*Eligible applicant*” means a qualified fair that is a member in good standing of the Association of Iowa Fairs.

“*Fund*” means the fairgrounds infrastructure aid fund established pursuant to Iowa Code section 12.101.

“*Grant*” means funds received through the program as evidenced by a cost-share agreement with the department.

“*Grantee*” means any eligible applicant receiving funds under this program.

“*Matching funds*” means cash or nonfinancial support that is associated with the improvements as provided by the eligible applicant.

“*Nonfinancial support*” may include, but is not limited to, the value of labor and services, real property, and personal property donated for purposes of the project, which are considered at their fair market value.

“*Program*” means the fairgrounds infrastructure grant program.

[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.4(12) Application procedures and content. The department shall develop an application for fairs to complete and submit to the department in order to apply for a grant under this program.

20.4(1) Applications must be completed and submitted to the department between July 1 and December 1 of each year.

20.4(2) Applications may be obtained by contacting the Office of the Treasurer of State, Capitol Building, Des Moines, Iowa 50319; telephone (515)281-5368.

20.4(3) Applications must be received or postmarked on or before December 1 of each year. Applications received after that date may be returned to the applicant.

20.4(4) An application shall include, but not be limited to:

- a. The applicant’s name, mailing address, E-mail address, contact person, and contact information.
- b. A statement of the specific amount of grant funds requested.
- c. An explanation of the type of improvement or improvements, with specific amounts that will be expended to pay for the improvement or improvements.
- d. An explanation as to the source of matching funds.
- e. A copy of the applicant’s most current financial statement as required under Iowa Code section 174.19.

20.4(5) If additional information is required, the applicant will be notified of the request for additional information.

[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.5(12) Eligibility. To be eligible for the fairgrounds infrastructure grant program, a fair must meet the following threshold requirements:

20.5(1) The source of the matching funds shall not include state aid.

20.5(2) An applicant must be a member in good standing of the Association of Iowa Fairs.

20.5(3) The application shall be signed by two fair officials who are members of the entity seeking the grant.

20.5(4) The applicant association must adopt a resolution requesting fairgrounds infrastructure aid funds.

20.5(5) The grant amount requested shall be not less than \$5,000 and not greater than \$50,000 during any fiscal year.

[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.6(12) Application review criteria. Applications that meet the threshold requirements detailed in rule 20.5(12) will be reviewed by the department and representatives of the Association of Iowa Fairs. The department shall evaluate and rank applications based on the following criteria:

20.6(1) Inclusion of, at a minimum, the information detailed in rule 20.5(12).

20.6(2) Compatibility with the program as described in Iowa Code section 12.102.

20.6(3) The feasibility of the proposed project.

20.6(4) The proportion of matching funds to be contributed to the project.

20.6(5) The extent to which the facilities enhance or promote the fair.

[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.7(12) Selection process. The department will determine, contingent upon availability of funds, the number of grant awards and the amount of each grant award.

[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.8(12) Grant denial. An application may be denied for reasons that include, but are not limited to, the following:

20.8(1) The applicant does not meet the eligibility requirements set forth in rule 20.5(12).

20.8(2) The applicant does not provide sufficient information as requested in the application.

20.8(3) Funds are insufficient to award financial assistance to all qualified applicants.

20.8(4) The department received the application after the deadline stated in the application.

[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.9(12) Administration.

20.9(1) Cost-share agreement. Each grant awarded under this program shall be conveyed by means of a cost-share agreement between the management of the eligible fair and the department. The cost-share agreement shall include, but will not be limited to:

a. A description and explanation of the project or projects being funded, including a statement of the matching funds that will be pledged by the grantee.

b. The dollar amount of the grant award and the manner in which funds will be transferred.

c. The requirement for the grantee to submit to the department a report following the implementation of the funded project or projects. The report shall state how the grant funds and matching funds were expended in the execution of the contract.

d. The department's remedies in the event of a grantee's breach of contract.

20.9(2) Requests for funds. Grantees shall submit requests for funds in the manner and on forms prescribed by the department.

20.9(3) Record keeping and retention. The grantee shall retain all financial records, supporting documents and other records pertinent to the grant project for two years after closeout.

20.9(4) On-site evaluations. The department may conduct on-site evaluations of proposed projects.

20.9(5) Amendments to cost-share agreements. Any substantive change to a cost-share agreement shall be considered an amendment. Changes include time extensions and significant alteration of the

funded project that changes the scope, location, objectives or scale of the approved project. Amendments must be requested in writing by the grantee and are not considered valid until approved by the department.
[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.10(12) Matching funds requirement. An eligible applicant shall provide matching funds of \$1 of nonstate moneys for every \$2 received from the department. The nonfinancial support included in the matching funds shall not exceed 35 percent.
[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.11(12) Noncompliance. If the department finds that a grantee is not in compliance with the requirements of this program, the grantee will be required to refund to the state the grant award amount. Reasons for a finding of noncompliance include, but are not limited to, a finding that the grantee is using program funds for unauthorized activities, has failed to complete the approved project in a timely manner, or has failed to comply with the grant agreement.
[ARC 7527B, IAB 1/28/09, effective 3/4/09]

781—20.12(12) Forms. Appropriate forms must be completed in paper or online (whichever is applicable). Current forms are available online at www.treasurer.state.ia.us. The department may from time to time provide additional forms for use by participants in connection with actions involving the fairgrounds infrastructure grant program and will make those forms available online and in paper format.
[ARC 7527B, IAB 1/28/09, effective 3/4/09]

These rules are intended to implement Iowa Code sections 12.101 and 12.102.

[Filed ARC 7527B (Notice ARC 7405B, IAB 12/3/08), IAB 1/28/09, effective 3/4/09]