

ENERGY INDEPENDENCE, OFFICE OF[350]

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CHAPTER 1
RULES APPLICABLE TO ALL CHAPTERS

350—1.1(469) Definitions. Unless otherwise stated, the following definitions apply:

“Board” means the Iowa power fund board created in Iowa Code Supplement section 469.6.

“Committee” means the due diligence committee created in Iowa Code Supplement section 469.7.

“Director” means the director of the office of energy independence.

“Entity” or *“entities”* includes but is not limited to businesses, nonprofit organizations, educational institutions, units of state and local government, and individuals conducting business, research, or programs in Iowa.

“Foreign” means a locality outside of, or nation other than, the United States, Canada, or Mexico.

“Fund” means the Iowa power fund created in Iowa Code Supplement section 469.9.

“Office” means the office of energy independence.

This rule is intended to implement Iowa Code Supplement sections 469.1 to 469.10.

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CHAPTER 2
ORGANIZATION OF OFFICE OF ENERGY INDEPENDENCE

350—2.1(469) Purpose. The office of energy independence was established to coordinate state activities concerning energy independence.

350—2.2(469) Office structure.

2.2(1) General. The office's organizational structure includes the director and staff as appointed by the director.

2.2(2) Director. The office is administered by a director appointed by the governor, who serves at the pleasure of the governor, and whose appointment is subject to confirmation by the senate. The director is the chief administrative officer of the office and in that capacity administers the programs and services of the office in compliance with applicable federal and state laws and regulations. The duties of the director are as authorized in Iowa Code Supplement section 469.3.

2.2(3) Administrative assistance. The director may contract for and utilize assistance from the department of economic development regarding the administration of grants, loans, and other financial incentives related to Iowa Code Supplement section 469.9(4)"a"(1); the department of natural resources and the utilities board regarding assistance in the administration of grants, loans, and other financial incentives related to Iowa Code Supplement section 469.9(4)"a"(2); and other state agencies as appropriate.

2.2(4) Advisory committees. The director may appoint committees to serve in an advisory capacity to the office as deemed necessary to accomplish the work of the office. The makeup of a committee and the terms of committee members will be established by the director. Advisory committees may be dissolved as deemed appropriate by the director; and other advisory committees may, from time to time, be established for specific purposes.

350—2.3(469) Contact information. The public may obtain information about or from the office by contacting the Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; telephone (515)281-0187; or through the office's Web site at www.energy.iowa.gov.

These rules are intended to implement Iowa Code Supplement sections 469.1 to 469.10.

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CHAPTER 3
IOWA POWER FUND BOARD AND
DUE DILIGENCE COMMITTEE

350—3.1(469) Location and administration.

3.1(1) The board and the committee are located within the office for administrative purposes.

3.1(2) The director shall budget moneys to pay the expenses of the board and the committee and shall provide office space, staff assistance, and necessary supplies to the board and the committee.

3.1(3) Requests for information about the board or committee may be made by contacting the office as provided in rule 350—2.3(469).

350—3.2(469) Organizational structure. The Iowa power fund legislation, Iowa Code Supplement section 469.6 and 469.7, establishes the board and the committee.

3.2(1) Iowa power fund board.

a. The board is comprised of 11 voting members and 7 nonvoting, ex officio members appointed as provided in Iowa Code Supplement section 469.6.

b. Of the voting members of the board, the chairperson of the utilities board, the secretary of agriculture, and the directors of the department of economic development and the department of natural resources may, by written statement to the board, designate a representative and an alternate to participate in board deliberations and vote.

c. A majority of the voting members of the board shall constitute a quorum.

d. A majority of the total voting membership of the board shall be necessary to act in any matter within the jurisdiction of the board.

e. Board members may participate in discussions and cast votes via telephone or the Iowa communications network (ICN) or other video-conferencing technology.

f. The board shall annually elect from the voting membership a chairperson and vice chairperson during the first meeting in May.

g. The members appointed by the governor are appointed for three-year staggered terms. There is no statutory limitation to the number of terms a voting member may serve.

h. The duties of the board are as listed in Iowa Code Supplement section 469.6(5).

i. The board receives recommendations from the committee regarding applications for proposed projects using moneys from the fund.

j. In performing its functions, the board may seek the expertise of other boards, committees, and agencies and other individuals and organizations as deemed appropriate by the board.

3.2(2) Due diligence committee.

a. The committee is comprised of seven members appointed as provided in Iowa Code Supplement section 469.7.

b. A majority of the members of the committee shall constitute a quorum. A quorum shall be necessary to act on any matter within the jurisdiction of the committee.

c. The director shall chair and facilitate the committee.

d. Committee members may participate in discussions and cast votes via telephone or the ICN or other video-conferencing technology.

e. The committee reviews applications that come before the board for financial assistance from moneys in the fund.

f. The committee, after a thorough review, shall determine whether a proposed project using moneys from the fund is practical, economically feasible, and furthers the goals of the fund set forth in Iowa Code Supplement section 469.9. The committee may recommend a proposal as written or on a conditional basis or may recommend that a proposal be rejected.

350—3.3(469) Board and committee procedures.

3.3(1) Meetings and agendas. Meetings of the board and committee are generally held monthly. By notice of the regularly published meeting agenda, the board and committee may hold regular or special meetings at locations within the state. Meeting agendas are available from the office.

3.3(2) Meeting procedures.

a. Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

b. Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

c. Open-session and closed-session proceedings shall be electronically recorded. Minutes of open meetings shall be available for viewing at the office or through the office's Web site.

3.3(3) Board committees. The board chairperson may appoint or dissolve board committees as deemed necessary to accomplish the work of the board.

350—3.4(469) Conflicts of interest.

3.4(1) Definition. A conflict of interest is defined as the member's having a significant employment relationship with an applicant, or being a member of the board of directors or stockholder of a corporate applicant, or having a financial relationship with an applicant, including but not limited to an investor, a contractor, a consultant, or a competitor, or an immediate family member of such a person. For purposes of this rule, "immediate family" means a member's spouse, children, grandchildren, and parents.

3.4(2) Procedures. As soon as a member of the board or committee becomes aware of a conflict of interest in a project for which applications are filed with the board or for which potential applications are discussed by the board or committee, the member shall follow these procedures:

a. If the conflict is known before a meeting, the member shall fully disclose the interest to the chairperson of the board in writing at least 24 hours before the meeting.

b. If the conflict is discovered during a meeting, the member shall orally inform the board, and the nature of the conflict shall be reported in writing to the chairperson of the board within 24 hours after the meeting.

c. The member who has the conflict shall not participate in discussion or vote on any issues concerned with the project.

These rules are intended to implement Iowa Code Supplement sections 469.1 to 469.10.

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CHAPTER 4
IOWA POWER FUND FINANCIAL ASSISTANCE

350—4.1(469) Purpose. The purposes of the Iowa power fund include:

1. Increasing the research, development, production, and use of biofuels and other sources of renewable energy;
2. Improving energy efficiency;
3. Reducing greenhouse gas emissions; and
4. Furthering the research, development, commercialization and distribution of technologies and practices to sustain the environment and develop business in this state.

Each individual proposal awarded a grant or loan need not meet all of these purposes, but the grants and loans awarded by the board and taken as a whole shall be consistent with these purposes.

350—4.2(469) Iowa power fund. The fund includes appropriations made to the fund by the general assembly, other moneys available to or obtained or accepted from federal or private sources, interest earned, and repayments and recaptures of loans and grants.

350—4.3(469) Office and board authority. The fund is under the control of the office. The director shall coordinate the administration of the fund. The board shall approve, defer, or deny applications for financial assistance from moneys appropriated to the fund pursuant to Iowa Code Supplement section 469.9.

350—4.4(469) Allocation of power fund moneys.

4.4(1) Moneys available in the fund are to be used to provide financial assistance to entities conducting business, research, or programs in Iowa:

a. To accelerate research and development, knowledge transfer, and technology innovation, and improve the economic competitiveness of efforts furthering the goals of the fund stated in rule 350—4.1(469).

b. To increase the demand for and educate the public about technologies and approaches furthering the goals of the fund stated in rule 350—4.1(469).

4.4(2) Appropriations are subject to actual receipt of moneys by the fund.

4.4(3) The office shall utilize up to 1 5/10 percent of the amount appropriated from the fund for a fiscal year for administrative costs.

4.4(4) Of the moneys appropriated to the office and deposited in the fund, \$2.5 million shall be allocated on an annual basis to the department of economic development for deposit into the workforce training and economic development funds of the community colleges. Of the funds so deposited into the workforce training and economic development funds of the community colleges, \$2.5 million shall be used each year in the development and expansion of energy industry areas and for the department's North American Industry Classification System for targeted industry areas. The department of economic development shall report annually to the board on use of these funds.

350—4.5(469) Eligible applicants. Entities conducting, proposing, or partnering to conduct business, research, or programs in Iowa are eligible to apply to the office for financial assistance from the Iowa power fund. Proposals must demonstrate potential for significant impact in Iowa. A single entity or group of entities may submit an application for assistance from the fund.

350—4.6(469) Eligibility criteria for financial assistance.

4.6(1) General criteria. Applicants must include documentation relating to the actual or potential development of the following:

a. Utilization of crops and products grown or produced in this state that maximize the value of crops used as feedstock in biomanufacturing products and as coproducts.

b. Reduction of greenhouse gas emissions and carbon sequestration.

c. Commercialization of technology and product development for sale in the national and international market.

d. Alternative and renewable energy and increased energy efficiency.

e. Private or federal matching funds.

4.6(2) *Research criteria.* In addition to including documentation related to the general criteria in subrule 4.6(1), applicants seeking funding for research must include information related to the following:

a. The technical feasibility of the proposal.

b. The extent to which the proposed research builds on already existing research.

c. The extent to which the proposed research meets a market need and demonstrates viability for commercialization.

4.6(3) *Commercialization criteria.* In addition to including documentation related to the general criteria in subrule 4.6(1), applicants seeking funding for commercialization projects must include information related to the following:

a. The extent to which the technology has been proven.

b. The technology sought to be commercialized.

c. The current scale-up status of the project.

4.6(4) *Education criteria.* In addition to including documentation related to the general criteria in subrule 4.6(1), applicants seeking funding for educational projects must include information related to the following:

a. The target audience, including the estimated number of people targeted.

b. An estimate of the energy savings possible or fossil fuel reductions achievable if the target audience implements the methods presented.

4.6(5) *Undesignated projects criteria.* In addition to including documentation related to the general criteria in subrule 4.6(1), applicants seeking funding for undesignated projects must include information that explains how the project meets the statutory goals of the fund.

350—4.7(469) Forms of assistance.

4.7(1) *Types of assistance.* Financial assistance from the fund may consist of, but is not limited to, loans, forgivable loans, grants, investments, loan guarantees, and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

4.7(2) *Eligible uses of funds.* The eligible uses of the funds awarded by the board may be limited at the board's discretion. Generally, funds awarded by the board may not be used to fund the purchase of land or buildings, and no more than 10 percent of the funds awarded per application may be used for indirect costs.

350—4.8(469) Application process.

4.8(1) *Preapplication.* To apply for moneys from the fund, an applicant shall submit a preapplication to the office in a form provided by the office on behalf of the board. The preapplication serves as an executive summary of the applicant's proposal. The director and committee shall review preapplications and request full applications for those projects that appear to meet the eligibility criteria and statutory goals of the fund.

4.8(2) *Full application.* An applicant requested to submit a full application shall submit such application to the office in a form provided by the office on behalf of the board. The committee reviews the full applications and any technical, scientific or financial review completed and makes recommendations to the board. The board reviews the applications and makes the final decision. The board shall have final authority to approve, defer, or deny such applications. The board, committee, or office may request additional information at any time and proceed with consideration of the application when that information is received.

4.8(3) *Technical, scientific or financial review.* The board or committee may request an applicant to obtain a technical, scientific or financial review of a proposal which may wholly or partially be funded at the applicant's expense. The review may be obtained from a reviewer recommended by the board or committee or may be obtained from a reviewer selected by the applicant and approved in advance by

the board or committee. Only reviews from reviewers recommended by or approved by the board or committee will be accepted.

4.8(4) Agency review. The office may refer proposals to other state agencies for review as appropriate.

4.8(5) Ongoing acceptance of applications. Applications shall be accepted by the office on behalf of the board on an ongoing basis. Review times will vary due to the complexity and diversity of applications.

4.8(6) Forms and directions. Application forms and directions for completing the forms are available on line and from the office as provided in rule 360—2.3(469).

350—4.9(469) Contents of full application. A full application to request assistance from the fund shall include, but not be limited to, the following:

1. Documentation that the applicant meets the eligibility criteria stated in rules 350—4.5(469) and 350—4.6(469).

2. A description that explains how the applicant's project will promote one or more of the goals of the fund as set forth in rule 350—4.1(469).

3. A description of the proposed project, including all sources and uses of funding, the amount and type of funding requested, and an identification of the community or location for the project.

4. Information regarding benefits to the state of Iowa from the proposed project in terms of the state's return on investment in the project. A recipient of power fund moneys shall provide to the board on a periodic basis as determined by the board a report on the use and effectiveness of the moneys granted or loaned.

5. A business plan, schedule of work, or equivalent that describes the applicant's current operations and future plans.

6. If applicable, a description of the applicant's violations of law in the preceding five years including, but not limited to, worker safety statutes, rules, and regulations. The description must include violations of any federal or state environmental protection statute, regulation, or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the applicant shall provide an explanation of any mitigating circumstances and corrective action taken to achieve compliance. If requested by the office, the applicant shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and other information that would assist the office, the committee, and the board in understanding the nature of the violation.

7. A certification by the applicant that the information provided in the application is true and accurate to the best of the applicant's knowledge.

8. A release of information to permit the office, the committee, the board, and their respective attorneys and agents to reasonably evaluate the application.

9. Financial information to the extent requested by the board, including, if applicable, information about the applicant's owners, investors, and business structure.

350—4.10(469) Selection criteria. The board shall seek to maintain flexibility when making decisions to allocate moneys from the fund to specific proposals. In reviewing applications for financial assistance, the board and committee shall consider the extent to which the proposal is consistent with the energy independence plan as developed by the director in accordance with Iowa Code Supplement section 469.4, and consistent with the statutory purposes of the fund as described in rule 350—4.1(469). In addition, the board and committee shall consider the following:

4.10(1) Proposal categories.

a. The board may allocate moneys from the fund annually to projects in any or all of the following categories:

- (1) Commercialization.
- (2) Research.
- (3) Education.

(4) Undesignated.

b. The allocation of moneys by the board to proposals in these categories is discretionary and depends on factors including, but not limited to, the quality and quantity of the applications submitted.

4.10(2) Financial assistance.

a. The board will consider whether the applicant has available financial resources in addition to the fund to support the proposal financially. In assessing available financial resources, the board may:

(1) Consider both private and public funds as available financial resources.

(2) Recognize the contribution of in-kind resources.

(3) Require a match of available financial resources for commercialization proposals.

(4) Give weight to available financial resources for research, education, or other undesignated proposals.

b. The significance of the availability of financial resources may be weighed by the board in its discretion when allocating moneys from the fund for specific proposals.

350—4.11(469) Contract administration.

4.11(1) Notice of award. Applicants will be notified in writing of the board's decision, including any conditions and terms of approval.

4.11(2) Contract required. The board shall direct the office to prepare an agreement which includes, but is not limited to, a description of the project to be completed by the recipient; length of the project period; conditions to disbursement as approved by the board; a requirement for a report, to be made to the board on a periodic basis determined by the board, on the use and effectiveness of financial assistance from the fund; and the reimbursement requirements of the recipient or other penalties imposed on the recipient in the event the recipient does not meet the commitments set forth in the contract, in the documentation provided to establish eligibility, or in other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis. Successful applicants shall execute an agreement within 120 days of the approval. Failure to do so may result in action by the board to revoke the award. The 120-day time limit may be extended by the board for good cause shown. No award is final until an agreement is signed by all parties.

4.11(3) Contract amendments. Any substantive change to a funded project will require a contract amendment approved by the office and, if required by subrule 4.11(4), approved by the committee or board. Substantive changes include, but are not limited to, contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries.

4.11(4) Situations requiring committee approval. The committee shall have the authority to act on behalf of the board and take final action on budget revision amendments that would not substantially change the terms or conditions of the award or contract; on the discontinuance or suspension of collection efforts; and on negotiated settlements for projects that do not meet contract requirements. The committee may decide to take final action or to refer the matter to the full board for action.

4.11(5) Intellectual property. The director shall promote statewide utilization of the results of research, development, and commercialization activities funded in whole or in part by the fund. The director is authorized to negotiate provisions with applicants that address issues relating to income generated from patents, trademarks, licenses, or royalties expected to be produced as a result of moneys proposed to be expended from the fund. The director may seek assistance from appropriate state agencies and may seek outside expertise. An applicant shall not be prevented from protecting any previously developed intellectual property.

These rules are intended to implement Iowa Code Supplement sections 469.1 to 469.10.

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CHAPTERS 5 to 50
Reserved

CHAPTER 51
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

350—51.1(17A,22) Definitions. As used in this chapter:

“*Agency*” means the office of energy independence.

“*Confidential record*” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Custodian*” in these rules means the director of the office of energy independence or the director’s designee.

“*Open record*” in these rules means a record other than a confidential record.

“*Personally identifiable information*” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, which is owned by or in the physical possession of the agency.

“*Record system*” in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

350—51.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

350—51.3(17A,22) Requests for access to records.

51.3(1) Location of record. A request for access to a record should be directed to the Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

51.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays.

51.3(3) Request for access to open records.

a. Requests for access to open records may be made in writing, in person, electronically, or by telephone.

b. Requests shall include the name, address, and telephone number and, if available, the E-mail address of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

c. For all requested records, the person making the request shall set forth all available information that would assist in locating the records.

51.3(4) Response to requests.

a. Timing. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. Advance requests to have records available on a certain date may be made by telephone or correspondence. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as is feasible. Records will be produced for inspection at the earliest date possible following the request. Records should be inspected within ten business days after notice is given that the records have been

located and are available for inspection. After ten business days, the records will be returned to storage and additional costs may be imposed for having to produce them again.

b. Reasonable delay. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4).

c. Notice to requester. The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

d. Denial of access to records. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 350—51.4(17A,22) and other applicable provisions of law.

51.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization. Individuals will not be given access to the area where the records are kept and will not be permitted to search the files.

51.3(6) Copying. A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

51.3(7) Fees.

a. When charged. The agency may charge fees in connection with the examination, search, retrieval, restoration, or copying of records. To the extent permitted by applicable provisions of law, the payment of fees may be waived in the case of small requests of ten or fewer copies when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying, faxing, and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester. Actual costs to fax a document may also be charged to the requester.

c. Search and supervisory fee. An hourly fee may be charged for actual office expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall prominently post in agency offices the hourly fee to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Computer-stored information. All costs (including staff time) for retrieval, restoration, and copying of information stored in electronic storage systems will be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

350—51.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the

examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 350—51.3(17A,22).

51.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

51.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

51.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

51.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

51.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

350—51.5(17A,22) *Requests for treatment of a record as a confidential record and its withholding from examination.* The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

51.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

51.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

51.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who

has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) (trade secrets), 22.7(6) (advantage to competitors), or 22.7(18) (communications not required by law, rule, procedure, or contract), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

51.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

51.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

51.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

350—51.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

350—51.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

350—51.8(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided the information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

These rules are intended to implement Iowa Code chapters 17A and 22.

[Filed emergency 1/11/08 after Notice 11/21/07—published 1/30/08, effective 1/11/08]

CHAPTER 52
OFFICE PROCEDURE FOR RULE MAKING

350—52.1(17A) Adoption by reference. The office of energy independence hereby adopts the agency procedure for rule making segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(commission, board, council, director)”, insert “director”.
2. In lieu of the words “(specify time period)”, insert “one year”.
3. In lieu of the words “(identify office and address)”, insert “Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319”.
4. In lieu of the words “(designate office and telephone number)”, insert “the director at (515)281-0187”.
5. In lieu of the words “(designate office)”, insert “Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319”.
6. In lieu of the words “(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)”, insert “rules mandated by federal law, including federal statutes or regulations establishing conditions for federal funding of federal programs where the board is not exercising any option under federal law”.
7. In lieu of the words “(specify the office and address)”, insert “Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319”.
8. In lieu of the words “(agency head)”, insert “director”.

These rules are intended to implement Iowa Code chapter 17A.

[Filed emergency 1/11/08 after Notice 11/21/07—published 1/30/08, effective 1/11/08]

CHAPTER 53
PETITIONS FOR RULE MAKING

350—53.1(17A) Adoption by reference. The office of energy independence hereby adopts the petitions for rule making segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate office)”, insert “office of energy independence”.
2. In lieu of the words “(AGENCY NAME)”, insert “OFFICE OF ENERGY INDEPENDENCE”.
3. In lieu of the words “(designate official by full title and address)”, insert “Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319”.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 54
DECLARATORY ORDERS

350—54.1(17A) Adoption by reference. The office of energy independence hereby adopts the declaratory orders segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate agency)”, insert “office of energy independence”.
2. In lieu of the words “(designate office)”, insert “Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319”.
3. In lieu of the words “(AGENCY NAME)”, insert “OFFICE OF ENERGY INDEPENDENCE”.
4. In lieu of the words “_____ days (15 or less)”, insert “5 working days”.
5. In lieu of the words “_____ days” in subrule 54.3(1), insert “15 days”.
6. In lieu of the words “(designate official by full title and address)”, insert “Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319”.
7. In lieu of the words “(specify office and address)”, insert “Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319”.
8. In lieu of the words “(agency name)”, insert “office of energy independence”.
9. In lieu of the words “(designate agency head)”, insert “director”.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 55
UNIFORM WAIVER AND VARIANCE RULES

350—55.1(17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the office. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the office.

55.1(1) Definition. “Waiver” or “variance” means an office action 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.

55.1(2) Authority.

a. A waiver or variance from rules adopted by the office may be granted in accordance with this chapter if (1) the office has authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

350—55.2(17A,ExecOrd11) Office discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the office upon consideration of all relevant factors.

55.2(1) Criteria for waiver or variance. The office may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the office finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, 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 or variance is requested.

In determining whether waiver or variance should be granted, the office shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the office shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees, and constituents.

55.2(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the office from granting waivers or variances in other contexts or on the basis of other standards if a statute or other office rule authorizes the office to do so, and the office deems it appropriate to do so.

350—55.3(17A,ExecOrd11) Requester’s responsibilities in filing a waiver or variance petition.

55.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

55.3(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver or variance is requested;

- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend;
- c. The relevant facts that the petitioner believes would justify a waiver or variance;
- d. 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 or variance;
- e. A history of any prior contacts between the office and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years;
- f. Any information known to the requester regarding the office's treatment of similar cases;
- g. 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 or variance;
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition;
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance;
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the office with information relevant to the waiver or variance.

55.3(3) *Burden of persuasion.* When a petition is filed for a waiver or variance from an office rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the office should exercise its discretion to grant the petitioner a waiver or variance.

350—55.4(17A,ExecOrd11) Notice. The office shall acknowledge a petition upon receipt. The office shall ensure that 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 within 30 days of the receipt of the petition. In addition, the office may give notice to other persons. To accomplish this notice provision, the office 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 office attesting that notice has been provided.

350—55.5(17A,ExecOrd11) Office responsibilities regarding petition for waiver or variance.

55.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver or variance, the office 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 office may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director/board, the director's/board's designee, a committee of the board, or a quorum of the board.

55.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of a rule filed within a contested case; (b) when the office so provides by rule or order; or (c) when a statute so requires.

55.5(3) *Ruling.* An order granting or denying a waiver or variance 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 operative period of the waiver if one is issued.

55.5(4) *Conditions.* The office may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

55.5(5) *Time for ruling.* The office shall grant or deny a petition for a waiver or variance 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 office shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

55.5(6) When deemed denied. Failure of the office to grant or deny a petition within the required time period shall be deemed a denial of that petition by the office.

55.5(7) 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.

350—55.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1) “e,” the office shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Director’s Office, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

350—55.7(17A,ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The office may at any time cancel a waiver or variance upon appropriate notice if the office finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

350—55.8(17A,ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

350—55.9(17A,ExecOrd11) Defense. After the office issues an order granting a waiver or variance, 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.

350—55.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver or variance is final office action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A

Sample Petition (Request) for Waiver/Variance

BEFORE THE IOWA OFFICE OF
ENERGY INDEPENDENCE

Petition by (insert name of petitioner)
for the waiver of (insert rule citation)
relating to (insert the subject matter)



PETITION FOR
WAIVER

Requests for waiver or variance from an office rule shall include the following information in the petition for waiver or variance where applicable and known:

- a. Petitioner’s (person asking for a waiver or variance) name, address, and telephone number;
- b. Citation of the specific rule from which a waiver or variance is requested;
- c. Description of the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend;
- d. Important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how 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 or variance is requested;

e. History of prior contacts between the office and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years;

f. Information known to the petitioner regarding the office's treatment of similar cases;

g. 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 grant of a waiver or variance;

h. Name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver or variance;

i. Name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance;

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the office with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the office, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how 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 or variance is requested.

2. The office may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Director, Office of Energy Independence, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and Iowa Code chapter 17A.

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